SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 1 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1283

STATE ex rel. WILMER RHODES, *Appellant*

vs.

GRANT K. COOK, *Appellee.*

On Appeal from the Supreme Court of the State of Washington

JURISDICTIONAL STATEMENT

Of Counsel:

KEANE, HAESSLER,
BAUMAN & HARPER
1430 American Bank Bldg.
Portland, Oregon 97205

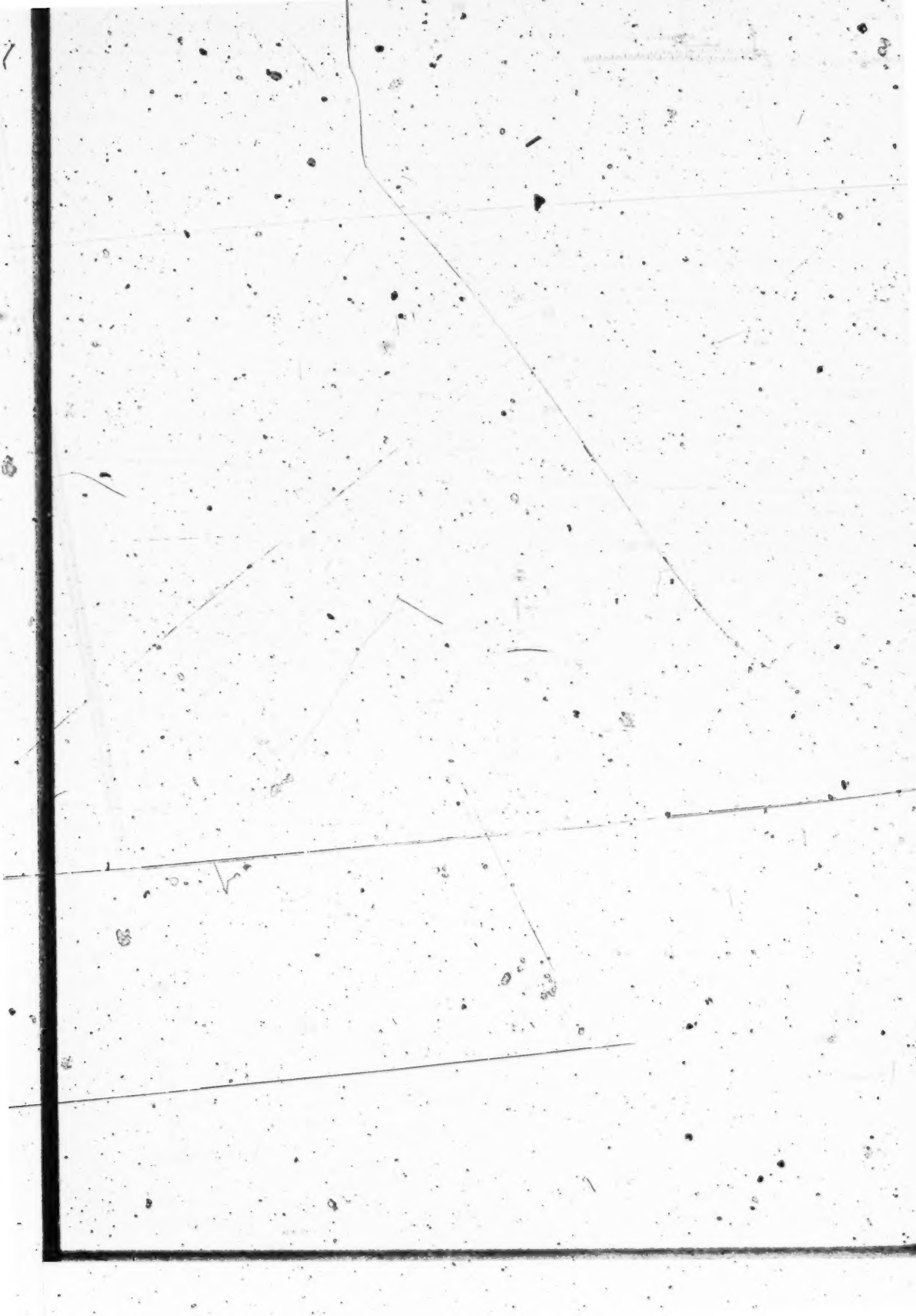
NIEMEIER & HAMILTON
Poulsbo, Washington 98370

E. A. NIEMEIER
Poulsbo, Washington 98370

FRANK A. BAUMAN
JACK R. PLATTEN
1430 American Bank Building
Portland, Oregon 97205

JOHN K. MALLORY, JR.
R. MICHAEL DUNCAN
1250 Connecticut Avenue, N.W.
Washintgon, D.C. 20036
Attorneys for Appellant

DAILY JOURNAL OF COMMERCE
20



INDEX

	Page
I. Opinions Below	1
II. Grounds for Jurisdiction	1
A. Final Judgment Sought to be Reviewed	2
B. Notice of Appeal Filing	2
C. Statutory Provisions Conferring Jurisdiction	2
D. Cases Believed to Sustain Jurisdiction	2
III. Statutes Involved	2
IV. Questions Presented	3
V. Statement	4
VI. The Questions are Substantial	10
A. The Questions Are of Public Importance	17
B. Conclusion	19

Appendix:

A-1. Opinion, Supreme Court of the State of Washington, November 9, 1967	1a
A-2. Remittitur of the Supreme Court of the State of Washington	11a
B-1. Oral Ruling From Bench of the Superior Court of the State of Washington, County of Snohomish	13a
B-2. Findings of Fact and Conclusions of Law of the Superior Court of the State of Washington, County of Snohomish	17a
B-3. Judgment of Dismissal of the Superior Court of the State of Washington, County of Snohomish	25a
C. State of Washington v. Frank Randall, of the Superior Court of the State of Washington, County of Kitsap, Court's Oral Opinion	27a
D. Pertinent Provisions of the Snohomish County, State of Washington Uniform Plumbing Code	35a

CITATIONS

Cases

	Page
Allen Bradley Co. Local No. 3, I.B.E.W., 325 U.S. 797 (1945)	12
Eastern R.R. Conference v. Noerr Motor Freight, 365 U.S. 127 (1961)	12
Ferguson v. Skrupa, 372 U.S. 726 at 730 (1963)	12
King Mfg. Co. v. City Council of Augusta, 277 U.S. 100 (1928)	2
Kotch v. Board of River Pilot Commissioners for the Port of New Orleans, 330 U.S. 552 (1947)	2
Morey v. Doud, 354 U.S. 457 at 463 and 468 (1957)	13, 17
Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483 (1955)	13
Zschernig v. Miller, 399 U.S. 429 (1968)	2

Statutes

Snohomish County, State of Washington, Uniform Plumbing Code, Sections	
1.4	15, 16
1.8	5
1.9	5
1.10	3, 5, 6, 8, 14, 15, 18
1.11	5
306	14
United States Code, 28 U.S.C. § 1257(2)	2
United States Constitution, Article XIV, § 1	2, 4, 6, 7, 8, 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No.

STATE ex rel. WILMER RHODES,
Appellant

vs.

GRANT K. COOK,
Appellee.

On Appeal from the Supreme Court of the State of Washington

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington, is reported in 72 Wash. 2d 431, 433 P.2d 677, and is set forth in the appendix to this Jurisdictional Statement. (pp. 1a to 10a). The opinion of the Superior Court of the State of Washington for Snohomish County is not reported and is set forth in the appendix to this Jurisdictional Statement. (pp. 13a to 16a).

JURISDICTION

Appellant, Wilmer Rhodes, brought this action seeking a mandamus writ in the Superior Court of the State

of Washington for Snohomish County to compel Appellee, Grant K. Cook, Administrative Authority, Snohomish County Plumbing Code, to issue a permit to appellant to allow him to fix up the plumbing in a single-family dwelling owned by him, but which he did not intend to occupy. Appellant alleged that the Plumbing Code, by prohibiting the issuance of a permit to him, violated his rights under the Constitution of the State of Washington and the Fourteenth Amendment to the Constitution of the United States. The opinion of the Supreme Court of the State of Washington was entered on November 9, 1967. Appellant timely filed a motion for rehearing, which was denied by the Supreme Court of the State of Washington on January 3, 1968, making its opinion of November 9, 1967 a final judgment on January 3, 1968. Notice of Appeal was filed by the appellant in the Supreme Court of the State of Washington on March 19, 1968. Jurisdiction is conferred on this Court by 28 U.S.C. § 1257(2). *King Mfg. Co. v. City Council of Augusta*, 277 U.S. 100 (1928). *Kotch v. Board of River Pilot Commissioners for the Port of New Orleans*, 330 U.S. 552 (1947). *Zschernig v. Miller*, 399 U.S. 429 (1968).

STATUTE INVOLVED

This appeal involves the Snohomish County Plumbing Code adopted January 22, 1962, as amended Janu-

ary 28, 1963—Exhibit 4 to the Statement of Facts. The particular provision of the Code challenged on this appeal is Code §§ 1.10(a) and (c) which provide as follows:

> "§ 1.10 To Whom Permits May Be Issued
>
> "(a) No permit shall be issued to any person to do or cause to be done any plumbing or drainage work regulated by this code, except to a person holding a valid unexpired and unrevoked Plumbing Contractor's Certificate of Qualification or Registration as required by Section 2.3, except when and as otherwise hereinafter provided in this section.
>
> * * * *
>
> "(c) Any permit required by this code may be issued to any person to do any plumbing or drainage work regulated by this code in a single-family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings in the event that any such person is the bona fide owner of any such dwelling and accessory buildings and quarters, and that the same are occupied by or designed to be occupied by said owner, provided, that said owner shall personally purchase all material and shall personally perform all labor in connection therewith."

Other pertinent provisions of the Code are set forth in the Appendix, pp. 35a to 40a.

QUESTIONS PRESENTED

1. Does the Snohomish County Plumbing Code vio-

late the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by unjustly discriminating against a non-occupying owner of a single-family dwelling in requiring that he apply for and obtain a Plumbing Contractor's Certificate by passing an examination and paying a license fee in order to engage in plumbing work in the dwelling which he owns, while permitting an occupying home owner to do plumbing work in his home without being required to obtain such a Certificate, where the Code also requires that any plumbing done is subject to comprehensive inspection by the authorities to insure that it meets the requirements of this Plumbing Code?

2. Does the Snohomish County Plumbing Code offend the due process clause of the Fourteenth Amendment to the Constitution of the United States by compelling a property owner willing to comply with all Code requirements which ensure safe and healthy plumbing to take a test, pay a fee and become licensed in the same fashion as a commercial plumber in order to plumb his own property which he does not occupy?

STATEMENT

In 1961, the Master Plumbers' Association of Everett, Washington, (the county seat of Snohomish County) formed a code committee and successfully petitioned the Snohomish County Commissioners to pass a Plumb-

ing Gode. The Commissioners adopted as the County's Plumbing Code the 1961 edition of the Uniform Plumbing Code of the Western Plumbing Officials Association.

The Code provides a comprehensive system of regulation for all "plumbing" within the County. Plumbing is defined by the Code as "the business, trade or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof." In order to conduct plumbing work, with a very limited exception for certain specified kinds of repair work which do not require replacement or rearrangement, (see § 1.9, Appendix, p. 36a), a permit is required. (§ 1.8, Appendix, p. 36a). Permits are only issued after submission of an application with plans, approval of the plans and payment of a work permit fee. (see § 1.11, Appendix, pp. 37a). A comprehensive system of inspection, testing and approval of work, fixtures and materials is prescribed to insure that Code requirements are met.

The particular provision of the Code which is the subject of this appeal concerns the limitations on persons to whom permits may be issued. (§ 1.10, *supra*). Under this section, permits may be issued only to "persons holding a valid unexpired and unrevoked Plumbing Contractor's Certificate of Qualification or Registration" with one exception set forth in section 1.10 (c).

The exception allows the owner of a single-family dwelling who meets certain specific requirements to secure a permit if the dwelling is "occupied by or designed to be occupied by said owner."[1]

The appellant purchased a single-family dwelling which he intended to fix up and rent. He applied for a permit pursuant to section 1.10 (c), but was denied the permit on the sole ground that he did not occupy or intend to occupy the dwelling. Appellant complied or will comply with requirements for a permit except that of occupancy of the house; and as a result of the plan approval and inspection requirements of the Code, it is clear that the work would fully meet Code standards.

Appellant filed an application for a writ of mandamus with an affidavit in support thereof which set forth his contention that the Plumbing Code insofar as it prevented the issuance of a plumbing permit to him constituted a violation of his rights under the Fourteenth Amendment of the Constitution of the United States and the comparable provisions of the Constitution of the State of Washington.[2] After trial, his applica-

1. The six specific requirements for meeting the exception are set forth in the opinion of the Supreme Court of the State of Washington, (Appendix, p. 2a) According to the Code, an owner of a single-family dwelling may do his own plumbing work provided the dwelling is occupied by him or designed to be occupied by said owner and five other pre-conditions are satisfied. Appellant admittedly does not meet the first proviso but does comply with the latter five conditions.

2. Petitioner contended that section 1.10(c) of the Code:

"violates Amendment XIV of the United States Constitution . . . by imposing unnecessary, discriminatory, arbitrary, oppressive and unreason-

tion was denied by a judge of the Superior Court of the State of Washington for the County of Snohomish, and the findings of fact and conclusions of law entered by the Superior Court reflect the court's decision that the Code provision was valid despite the question having been raised under the Fourteenth Amendment to the Constitution of the United States.[3]

On appeal to the Supreme Court of the State of Washington, specifically assigning as error the conclusions of law of the lower court sustaining the validity of the Code and holding that it was not repugnant to the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and the Washington State Constitution, a department of the court first heard argument and then referred the case to the court *en banc*, where the case was again reargued.

---

able restrictions upon petitioner's lawful right to carry on private business on his property, and by denying to petitioner equal protection under the Law."

Finding V of the Findings of Fact and Conclusions of Law of Superior Court, (Appendix, p. 19a). See also Affidavit in Support of Application for Writ of Mandamus, R. p. 0023.

3. The Superior Court concluded (Appendix, p. 23a):

"V

"Section 1.10(c) of said UNIFORM PLUMBING CODE does not deprive petitioner of life, liberty or property without due process of law as provided by Amendment XIV, Section I, of the United States Constitution and Article I, Section III, of the Washington State Constitution.

"VI

"Section 1.10(c) of said UNIFORM PLUMBING CODE is a reasonable classification and does not deny to petitioner equal protection of the laws as is provided for by Amendment XIV, Section I, of the United States Constitution and Article I, Section XII, of the Washintgon State Constitution."

The Supreme Court, by a six-to-three vote, affirmed the decision of the Superior Court. The majority opinion rejected appellant's argument that section 1.10(c) of the Code violated his rights under the equal protection clause of the Fourteenth Amendment on the ground that it was "reasonable to assume" that resident home owners will tend to perform plumbing work more carefully than the nonresident owner of a single-family dwelling. Based on this assumption, the court found that it was reasonable to require a nonresident home owner to obtain a Plumbing Contractor's Certificate, while not requiring that a resident home owner acquire such a certificate. Appendix, pp. 6a, 7a.

This assumption that the court made had no basis whatsoever in the record compiled in the trial of the case. It undoubtedly arose because of the court's view that "There is a presumption that facts justifying a regulation exist if such facts reasonably can be presumed." Appendix, p. 3a.

The court rejected appellant's argument that the Code violated his rights under the due process clause of the Fourteenth Amendment, holding that the requirement that a nonresident home owner be required to obtain a Plumbing Contractor's Certificate was reasonably related to the public health and safety and was a valid exercise of the police power. It based this conclusion upon the reasoning that a property owner who

does plumbing on his single-family dwelling that he intends to rent "has a similar impact upon the public to a commercial plumber." Appendix, p. 4a. Such individual, the court said, is to some extent carrying on a commercial activity since plumbing is an integral part of the property that he intends to rent or sell.

While recognizing that by reason of the inspection requirements of the Code, plumbing work would meet the standards of the Code no matter who did the work, the court nevertheless concluded that a requirement that "commercial plumbers who hold themselves out for hire" be licensed was "reasonably related to the public health and safety."[4]

The dissenting opinion pointed out that the majority opinion did not follow the trial court's rationale.[5] Responding to the majority assumption that plumbing done in dwellings occupied or designed to be occupied by the owner would result in a more careful job, the dissent emphasized that there could be no threat to public health or safety by allowing appellant to perform

---

4. This requirement was not at issue in the case. Appellant conceded the propriety of the licensing requirements being applicable to plumbing contractors or plumbers who hold themselves out for hire. Appellant objected only to having to become a plumbing contractor or commercial plumber in order to do plumbing work on the single-family house which he owned.

5. The Superior Court based its analysis and conclusions on the theory that the occupancy requirement "prevents subterfuge and provides protection from a person taking ownership of property for the purpose of being able to plumb it himself without having to meet the licensing requirements of the Code . . ." Appendix, p. 16a. The dissenting opinion in the Supreme Court pointed out that there was "no requirement that a resident owner continue to live in his house for any particular length of time." Appendix, p. 8a.

plumbing work on his house as the evidence in the case showed that inspection would "insure compliance with the technical requirements of the Code whether the work be done by a resident or a nonresident" (Appendix, p. 9a). The dissenting opinion concluded that the occupancy requirement had no "logical bearing on whether the work will pass inspection," and no "logical connection with the object sought to be accomplished by the ordinance—the protection of public health and safety." Appendix, p. 9a.

THE QUESTIONS ARE SUBSTANTIAL

The Uniform Plumbing Code in question is the handiwork of the Western Plumbing Officials' Association. From this league the Snohomish Plumbers Association obtained the Code at bar and persuaded the county authorities to adopt it with insignificant changes. This Code serves the association's purposes well. It grants to the commercial plumbing family—plumbing contractors, master plumbers and journeyman plumbers—a monopoly over every phase of plumbing activity in the county with one exception. Six conditions must be met to qualify for this exemption.[1] Appellant Rhodes complies with five of these six conditions. The one con-

1. The six conditions are: (1) The plumbing must be done in a single-family dwelling; (2) the dwelling must be used exclusively for living purposes; (3) the person doing the work must be the bona fide owner thereof; (4) the owner must personally purchase all materials and (5) personally perform all labor in connection therewith; (6) the dwelling shall be occupied by or designed to be occupied by said owner.

dition that he does not meet is that the single-family home which he owns is not occupied or designed to be occupied by him.

The Code's all-inclusive definition of plumbing prohibits everyone else from engaging in even quite simple plumbing and plumbing repair work, and subjects violators to criminal penalties. It is especially restrictive in prohibiting both non-occupying home owners, such as appellant, and resident non-owners (even those who have the owner's permission) from engaging in plumbing (as defined in the Code) on their own premises unless and until they become qualified as commercial plumbers by passing an examination and paying a fee. (The Code is silent on the examination's content.) These stern restrictions are imposed even though the pervasive supervisory provisions of the Code see to it that all plumbing done will meet the standards of the Code, so that whether the work is done by an "occupying home owner" or a commercial plumber, the result will be uniformly good.[2]

The record demonstrates Appellant's willingness to comply with all requirements of the Uniform Code in

---

2. On this point, the trial record includes the following testimony by Appellee Cook:

Question: In your inspections is there a difference in the quality of a contractor's work and a home owner's work?

Answer: No, sir.

Question: When a job is done, and inspection made, and the work approved, the job meets the specifications of the code, is that right?

Answer: That is right. (Statement of Facts, R. 0075).

question making sure of a safe and healthy plumbing result. Consequently, health is not an issue in this case. (Statement of Facts, R. 0078). Rather, the case includes the narrow issue whether the requirement that a person who owns a single-family home, in order to belong to the exempt class, must occupy the home or it be designed to be occupied by him, is rationally related to public health, safety or welfare.

In raising this issue Appellant does not want to turn back the clock to another day when economic legislation fell victim to restrictive judicial concepts of society's power to protect itself. Appellant presents no sweeping challenge to plumbing codes in general and this Uniform Plumbing Code in particular. This Court is faced with a limited issue which arises within the context of the restrictive rules announced by it to govern its review of economic legislation.

In viewing such issues the Supreme Court of the United States has returned to the original constitutional proposition that Courts do not substitute their social and economic views for the judgment of legislative bodies who are elected to pass state laws.[3] *Ferguson v. Skrupa*, 372 U.S. 726 at 730 (1963). There is no question that

3. However, it is submitted that restrictive legislation of the type under review here, pushed by a coalition of plumbing contractors, master plumbers, journeyman plumbers to preserve their monopoly and who, but for the fact that the monopoly has been granted by legislative fiat, c.f. *Eastern R.R. Conf. v. Noerr Motor Freight*, 365 U.S. 127 (1961), rather than gained by strikes and boycotts, c.f. *Allen Bradley Co. v. Local No. 3, I.B.E.W.* 325 U.S. 797 (1945), would be engaged in conduct violating the antitrust laws, deserves a very close look by the judiciary.

the equal protection clause of the Fourteenth Amendment admits of the exercise of a wide scope of discretion in statutory classifications and avoids what is done only when it is without any reasonable basis and is purely arbitrary. *Morey v. Doud*, 354 U.S. 457 at 463 (1957). Likewise, any classification having some reasonable basis does not offend against the same clause merely because it is not made with mathematical nicety or because it results in some inequality. *Ibid.* Nor, as this Court has said, is a law unconstitutional if it results in some discrimination, so long as it is not an invidious discrimination. *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483 (1955).

Along with this development, this Court at the same time has laid down broad but fundamental propositions that clearly deny a legislative body the power to erect statutory classifications which are not relevant to the ostensible end sought by the legislation. *Morey v. Doud*, 354 U.S. 457 (1957).

The professed end sought by this Uniform Code is the achievement of health, welfare and safety. This objective is boldly stated in the Preamble to the Code. The only evidence in the record linking health, welfare and safety with the classification feature is the testimony that commercial plumbers tend to do plumbing work somewhat more carefully than non-commercial

plumbers in Snohomish County. The majority of the Supreme Court of the State of Washington apparently looked to this evidence when it commented that "licensed plumbers generally do better work than do non-licensed plumbers," and relied upon the greater administrative convenience in supervising licensed plumbers to meet due process standards. (See Appendix, p. 5a). Administrative convenience might be a rationale for establishing a distinction between commercial plumbers and non-commercial plumbers, but it furnishes no reason for distinguishing between occupying and non-occupying home owners. The latter is the classifying distinction that the statute seeks to establish, and which is the subject of this appeal.

Apart from the evidentiary aspects of the case the majority of the Supreme Court of the State of Washington, without the support of any evidence, hinged its opinion upon the assumption that a resident would do a more careful job because he would be more motivated to protect himself and his family than the non-resident. But, the hard fact remains that this assumption relied on by the Supreme Court of the State of Washington is not consistent with the classification established by the Code, as the Code also clearly prohibits a resident non-owner, unless he obtains a plumbing contractor's license, from plumbing the premises in

which he resides. So residence does not form the legislative basis for the classification.[4]

It is self-evident that all plumbing work has an impact upon the public. This is so, whether it be done by an occupying or non-occupying owner. But to conclude as the majority opinion does that a non-occupying owner has similar impact upon the public to a commercial plumber because he is doing plumbing for others is not a tenable argument. Whether it be plumbing of occupiers or non-occupiers, others will use the plumbing while the occupier lives in the house and after he disposes of it.

The point of all this is that a search of the trial record and the section of the Code setting out the occupying—non-occupying distinction establishes the meaningless and arbitrary nature of the distinction. As is pointed out in the dissenting opinion of the Supreme Court of the State of Washington:

> "An owner may obtain a permit to do his plumbing work in compliance with the Code, live in the house for a time, be it ever so short, and then sell or lease it to others. In no material respect would such an owner differ from one who, from the beginning, plans to rent his house to others and who per-

4. Section 1.10(c) of the Code sets out the legislative basis for the classification in terms of a dwelling occupied by or designed to be occupied by the owner. (Underlining supplied.)

sionally performs identical work with full Code compliance." (See Appendix, p. 9a).

The actual experience under the Code, as shown by the uncontradicted testimony in the trial record is that the comprehensive requirements of the Code have compelled a healthy plumbing result, no matter who does the work. Mr. Alexander Gyorog, the leading proponent of the challenged Code in Snohomish County, and a master plumber, stated that if these Code provisions are followed, a high-quality condition will result. (Statement of Facts, R. 0081). Code supervision features include the preliminary requirement that all plumbing plans must be submitted to the administrative authority for approval (Section 306, Appendix, p. 39a). The Code provides for careful inspection of all authorized plumbing work (Section 1.4, Subsection 3, Appendix, p. 35a). The administration even determines whether the materials are satisfactory (Section 1.4, Appendix, p. 35a). Plumbing codes are generally offered in the name of health, safety and welfare; but the obstinate fact remains that in this particular instance whether the work be done by occupying owner or non-occupying owner, a healthy result is assured. All of this demonstrates that the limited exception in this Uniform Code in favor of occupiers is unrelated to the object sought, as the classification between occupiers and non-occupiers of single-

family dwellings is wholly unrelated to health or safety.

Why then was this exception drawn so narrowly to exclude owners of land who are non-occupants like Appellant? This Code is the product of a commercial combination made up of plumbing contractors, master plumbers and journeyman plumbers who have given themselves a monopoly privilege enforced by criminal law sanctions created to serve the objectives of a special-interest group. The inescapable effect of this privilege is to prevent an owner of a single-family house, for reasons unrelated to health or welfare, from fixing up plumbing in a dwelling which he owns. No one quarrels with the right of the commercial plumbing community to make a living, but the privilege granted by this statute goes beyond such a fundamental economic right. Fanciful and non-existent health ills should never be a shield to foster economic entities. As was said by this Court in *Morey v. Doud*, 354 U.S. 457 at 468 (1957), a class should not be established by statute on an arbitrary basis to give an economic advantage to those engaged in a given business.

The Questions Are of Public Importance

The case concerns a Uniform Plumbing Code first offered by the Western Plumbing Officials of Los Angeles, California. New editions of the Code have been published from time to time. The Snohomish County

Code before the Court is the 1961 Code. The particular section being reviewed, namely Section 1.10(a) and (c) is unchanged in the 1964 and 1967 Codes.

All or portions of the provisions of this code have been adopted by governmental bodies in the following ten states: Missouri, North Dakota, South Dakota, Nebraska, Kansas, Colorado, Montana, Idaho, Washington and California. It is presently under consideration in Arizona. The Code and the related Federal constitutional issues have been before *nisi prius* Courts in California, Montana and Washington. The Washington cases are two in number. The first is *State v. Randall* and the second is this appeal. In *Randall*, Judge Ryan of the Kitsap County Superior Court felt that the same restrictive classification section of the same Uniform Code raised unanswered Federal Constitutional questions and dismissed the criminal prosecution brought under it. Judge Ryan's opinion is included in the Appendix herein. (See Appendix, p. 27a-33a). That there was considerable interest in *Randall* is evidenced by the filing of an *amicus curiae* brief by the Kitsap Master Plumbers Association.[5] The *amicus* brief is discussed by Judge Ryan in his opinion. (See Appendix, p. 32a). *Randall*, of course, was not appealed to the Supreme Court of the State of Washington, whereas the current case (*Rhodes*) was. To appellant's knowledge, *Rhodes*

5. Referred to by Judge Ryan as ". . . certain persons interested in bringing about the conviction of the defendant." Appendix, p. 32a.

is the singular instance in which litigation involving the constitutionality of the section of the Uniform Plumbing Code, which is so widespread in the West, has been appealed to an appellate court.

Conclusion

The Code Section contested discriminates invidiously against home owners such as Appellant, and for the reasons stated above the judgment of the Supreme Court of the State of Washington should be reversed. The distinction created by the Code Section has no rational basis. The questions presented by this appeal are substantial and of public importance. The case deserves plenary consideration and probable jurisdiction should be noted.

Respectfully submitted,

E. A. NIEMEIER
Poulsbo, Washington 98370

FRANK A. BAUMAN
JACK R. PLATTEN
1430 American Bank Building
Portland, Oregon 97205

JOHN K. MALLORY, JR.
R. MICHAEL DUNCAN
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036

By_____
JOHN K. MALLORY, JR.

March 29, 1968

APPENDIX A-1

OPINION OF THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE ex rel. WILMER RHODES, *Appellant*, v. GRANT K. COOK, *Respondent*.	No. 38364 EN BANC Filed November 9, 1967

Appellant, petitioner below, purchased a single-family dwelling and moved it to his lot in Everett. He intended to rent the house, and in preparing it for rental found it necessary to do some plumbing work therein. He applied for a permit to do the plumbing, intending to purchase the materials and do the work himself. Appellant is not a certified plumbing contractor, and made no application for such certification. The permit was denied because the plumbing he intended to do was not in a house occupied or designed to be occupied by him.

Snohomish County has adopted the Uniform Plumbing Code, 1961 Edition, promulgated by the Western Plumbing Officials Association. The preamble to this code states that it is:

> An ordinance providing for the protection of the public health and safety, and the qualification and registration of persons engaged in the business of plumbing, or laboring at the trade of plumbing; requiring a permit and inspection for the installation or alteration of plumbing and drainage systems . . . .

Section 1.8 of said code provides that no plumbing work shall be commenced in any building without a permit. The challenged portion of the code, section 1.10, provides that no permit shall be issued for any plumbing

or drainage work regulated by the code except to a person holding a valid, unexpired and unrevoked plumbing contractor's certificate of qualification.

However, subsection (c) to said section 1.10 contains an exception to the certification requirement under six conditions:

(1) When the person desires to do plumbing or drainage work in a single family dwelling;

(2) When such dwelling is to be used exclusively for living purposes;

(3) When the person who will do the work is the bona fide owner of the dwelling;

(4) When the dwelling is occupied or designed to be occupied by said owner;

(5) Provided that said owner shall personally purchase all material; and

(6) Provided that such owner shall personally perform all labor in connection therewith.

The code also sets out detailed requirements for materials to be used, and for inspection and testing of all work before it is covered or hidden from view. The person doing the work is required to notify the board of plumbing inspectors when the work is ready to be inspected, and the work must meet the minimum standards set out by the code before approval will be given.

Appellant petitioned the trial court for a writ of mandamus, requiring respondent to issue a plumbing permit to appellant. His affidavit in support of his application for the writ stated that appellant was willing to comply with the standards for plumbing set out in the code, and to have his work inspected according to the code.

Appellant contends that since he intends to comply with the code standards, the requirement that nonresident homeowners be licensed to do plumbing on their

own premises is not reasonably related to the public health, and therefore unduly restricts his lawful activities upon private property, in violation of the due process provisions of the Washington State Constitution, art. 1, § 3, and in violation of the fourteenth amendment to the United States Constitution. Appellant contends also that the classification set out in section 1.10(c) between resident homeowners and nonresident homeowners with regard to the requirement for certification is arbitrary and unreasonable, in that it is not designed to protect the public health and safety, and therefore deprives him of equal protection of the laws, in violation of art. 1, § 12 of the Washington State Constitution, and in violation of the fourteenth amendment to the United States Constitution.

Due Process

The trial court, dismissing appellant's application for writ of mandamus, held that section 1.10 of the plumbing code does not violate state or federal constitutional due process standards.

Here on appeal, we must determine whether requiring certification or licensing of persons who desire to do plumbing work on residences which they own but do not intend to occupy, is reasonably related to the public health and safety, considering the detailed requirements set down in the plumbing code, and considering appellant's avowed intention to follow these requirements.

It has been long established that the police power extends to protection of the public health and safety, *Tacoma v. Fox*, 158 Wash. 325, 290 Pac. 1010 (1930), and that regulation of plumbing in the interest of health and safety is a valid exercise of the police power. *Spokane v. Latham*, 181 Wash. 161, 42 P.2d 427 (1935). Whether the facts of a particular case justify assertion of the police power is a question for the courts. *Bowes v. Aberdeen*, 58 Wash. 535, 109 Pac. 369 (1910); *Spokane v. Latham*, *supra*. There is a presumption that facts

justifying a regulation exist if such facts reasonably can be presumed. The test when lawful activity upon private property is involved has been said to be more stringent, however. This court stated in *Seattle v. Ford*, 144 Wash. 107, 257 Pac. 243 (1927), that where private rights exist the courts should review the legislative action and determine whether the legislative body has imposed unnecessary restrictions upon a lawful occupation or a lawful right. In *Brown v. Seattle*, 150 Wash. 203, 210, 272 Pac. 517 (1928), we quoted briefly from *Seattle v. Ford, supra* as follows:

> The courts will go far in sustaining the exercise of the police power for the preservation of the public health and safety, and in so doing private rights in conflict therewith are overriden; but on the other hand, the courts are equally concerned to see that, under the guise of protecting the public, private business—especially that carried on upon private property—is not arbitrarily restricted . . . .

We conclude that the requirement in section 1.10 for certification of nonresident homeowners is part of the total enforcement scheme of the code, and as such is reasonably related to the public health and safety. Such requirement is a valid exercise of the police power, and is not a violation of federal or state due process standards.

This conclusion is based upon the reasoning that a property owner who does plumbing for others, *i.e.* for prospective tenants or purchasers of his property, has a similar impact upon the public to a commercial plumber. He is to some extent carrying on a commercial activity, since plumbing is an integral part of the property he intends to rent or sell.

Appellant concedes that licensing of commercial plumbers is reasonably related to the public health and safety. Likewise, it must be conceded that one who does any amount of plumbing for others than himself and his immediate family, although it be more limited than

that done by commercial plumbers, is in a position similar to commercial plumbers, and can be required to be certified as to requisite skills.

Although one who does plumbing in a residence which he intends to rent or sell is subject to the laws of landlord-tenant, or of contract, such laws are not designed to protect the public health and safety. Nor are such laws adequate for this purpose.

Testimony at trial indicated that some plumbing defects are extremely difficult to detect, even under the detailed inspection required by the plumbing code, and that the plumbing inspectors rely to some extent upon the skill and care of commercial plumbers. Licensed plumbers generally do better work than do nonlicensed plumbers. It is, therefore, reasonable to limit noncertified work, and even though all work must be inspected, there is a legitimate reason for the certification requirement set out in section 1.10.

We cannot say that there is no reasonable relation to public health and safety in the requirement that nonresident homeowners be licensed to do plumbing for others; nor can we say that appellant has been arbitrarily deprived of a lawful right.

It is reasonable to assume that the county, when adopting the plumbing code, had such considerations in mind when it limited the right of homeowners to plumb their own premises. Obviously the impact to the public health and safety increases with the number of homeowners who might wish to plumb their premises for rental or sale, and with the number of such premises.

Equal Protection

The state and federal constitutional provisions for equal protection of the laws require that class legislation must apply alike to all persons within a class, and that reasonable grounds for the distinction must exist between those within and those without a designated

class. *Clark v. Dwyer*, 56 Wn.2d 425, 353 P.2d 941 (1960).

We conclude that the trial court was correct in finding no violation of equal protection of the laws in this case.

We said in *Clark v. Dwyer, supra*, at 431:

> Where possible, it will be presumed that the legislature has affirmatively determined any special facts requisite to the validity of the enactment, even though no legislative finding of fact appears in the statute. *State ex rel. Collier v. Yelle*, 9 Wn.2d 317, 333, 115 P.2d 373 (1941).

Since it is reasonable to assume that homeowners who do plumbing work for themselves and their immediate families in residences in which they reside or intend to reside, will tend to perform the work more carefully than would those who do plumbing work for strangers, it is reasonable to require certification of the latter class while not requiring certification of the former class. The public health and safety may adequately be protected in the first case by the inherent concern one has for his own welfare and that of his immediate family. This immediate concern may not be present when strangers are to use the premises, and therefore there is no adequate substitute for the certification requirement. We find a logical connection between the object of the legislation, *i.e.*, the protection of the public health and safety, and the requirement that one must intend to live in a residence himself if he is to be issued a permit to do plumbing work without first being examined as to requisite skill and certified as a plumbing contractor.

Appellant's most telling argument is that since in any event all work must be inspected and must meet the minimum standards set out by the plumbing code, it does not matter who does the work. Appellant concedes, of course, that such reasoning does not apply to commercial plumbers who hold themselves out for hire. The

additional requirement that such plumbers be licensed after passing an examination for requisite skill is reasonably related to the public health and safety.

We hold that the additional licensing requirement for nonresident homeowners who desire to do plumbing work for members of the public other than themselves and their immediate families is also reasonably related to the public health and safety.

The judgment of the trial court is affirmed.

FINLEY, C. J.

We concur:

Donworth, J.

Hunter, J.

Hamilton, J.

Hale, J.

Neill, J.

DISSENT

WEAVER, J. (Dissenting)—I dissent for I believe that a portion of § 1.10(c)[1] of the Uniform Plumbing

1. (c) Any permit required by this code may be issued to any person to do any plumbing or drainage work regulated by this code in a single family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings in the event that any such person is the bona fide owner of any such dwelling and accessory buildings and quarters, and that the same are occupied by or designed to be occupied by said owner, provided, that said owner shall personally purchase all material and shall personally perform all labor in connection therewith.

Code, 1961 Edition, promulgated by the Western Plumbing Officials Association and adopted by Snohomish County, violates the equal protection clause of our state constitution, art. 1, § 12, and the due process provision of art. 1, § 3, as well as the fourteenth amendment to the United States Constitution.

Class legislation must apply alike to all persons within a class, and *reasonable grounds* must exist for making a distinction between those within, and those without, a designated class. *Clark v. Dwyer*, 56 Wn.2d 425, 435, 353 P.2d 941 (1960).

Under the police power exercised for the protection of the public health and safety five of the six conditions for the issuance of a plumbing permit to one not a licensed plumber are reasonable grounds defining a permissible class. The conditions are: (1) the plumbing must be done in a single family dwelling; (2) the dwelling must be used exclusively for living purposes; (3) the person doing the work must be the bona fide owner thereof; (4) the owner must *personally* purchase all materials and (5) *personally* perform all labor in connection therewith. The work done by one within the class is subject to the strict standards of the plumbing code.

The sixth condition for the issuance of a plumbing permit to one not a licensed plumber—"that the same [premises] are occupied by or designed to be occupied by said owner"—is an alien among the other conditions. It does not, to my mind, meet the test that there must be some logical connection between the object sought to be accomplished by the legislation and the means prescribed to achieve it. *Brown v. Seattle*, 150 Wash. 203, 211, 272 Pac. 517 (1928); *Seattle v. Ford*, 144 Wash. 107, 110-11, 257 Pac. 243 (1927); *Spokane v. Latham*, 181 Wash. 161, 164, 42 P.2d 427 (1935); *State v. Spino*, 61 Wn.2d 246, 377 P.2d 868 (1963).

The trial court based its conclusion, in the main, upon a finding that the condition under attack

prevents subterfuge and provides protection from a person taking ownership of property for the purpose of being able to plumb it himself without having to meet the licensing requirements of the Code for persons doing plumbing for others, . . .

It should be observed that the ordinance contains no requirement that a resident owner continue to live in his house for any particular length of time. An owner may obtain a permit, do his plumbing work in compliance with the code, live in the house for a time, be it ever so short, and then sell or lease it to others. In no material respect would such an owner differ from one who, from the beginning, plans to rent his house to others and who personally performs identical work with full code compliance. In each case there is the possibility of evasion of the law insofar as bona fide ownership is concerned. In each case the public health and safety is protected by exacting full compliance with code requirements. I fail to see that the requirement that the owner live in the house, or intend to live in it, has any logical bearing on whether the work will pass inspection, nor will the requirement prevent attempted evasion of bona fide ownership. Neither does residency have any logical connection with the object sought to be accomplished by the ordinance—the protection of public health and safety.

The majority opinion does not adopt the trial court's rationale; its main thrust is that the requirement of residency will result in a more careful and professional job of plumbing. The conclusion does not follow. All of the evidence indicates that the plumbing inspector can insure compliance with the technical requirements of the code, whether the work be done by a resident or a nonresident. When these requirements have been met and approved, there is no threat to public health and safety.

Some concern has been expressed that if appellant, as the owner, is issued a permit to plumb his house with-

out a plumber's license, it will be necessary to permit a person who owns two or more houses, or who is a "speculative builder of single dwelling homes," to do likewise.

Although this question is not before us in the instant case, it is my present thinking—dicta that binds no one—that this conclusion does not follow. A permit might be refused, not upon the basis of nonresidency, but because the owner is "engaged in the business of plumbing or laboring at the trade of plumbing" as described in the preamble of the code (quoted in the majority opinion). The owner's work would, in these circumstances, have an impact upon the public similar to that of a licensed plumber. The owner would then be engaged in a commercial activity that requires a plumber's license for the protection of the public health and safety, but these are not the facts before us.

I would hold that the requirement of § 1.10(c) of the Uniform Plumbing Code of Snohomish County that an owner of a single family dwelling occupy or intend to occupy the dwelling in order to obtain a permit to do plumbing or drainage work upon it is arbitrary and violates const., art 1, § 3 and § 12, and the due process clause of the United States Constitution, amendment 14. I would reverse the judgment with direction to issue the writ of mandate.

WEAVER, J.

I concur in Judge Weaver's dissent.

HILL, J.

We concur.

ROSELLINI, J.

APPENDIX A-2

REMITTITUR OF THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

State ex rel. WILMER RHODES, *Appellant*, v. GRANT K. COOK, *Respondent*	REMITTITUR No. 38364 Snohomish County No. 81545

The State of Washintgon to: The Superior Court of the State of Washington in and for Snohomish County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on November 9, 1967, became the final judgment of this court in the above entitled case on January 3, 1968. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

Two hundred fifty three and 36/100 dollars ($253.36) in favor of respondent and against appellant and his cash bond.

The petition for rehearing was denied by an order dated January 3, 1968.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 4th day of January, A.D. 1968.

WILLIAM M. LOWRY, Deputy
Clerk of the Supreme Court, State of Washington

BLANK

PAGE

APPENDIX B-1

ORAL RULING FROM BENCH OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SNOHOMISH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SNOHOMISH

STATE EX. REL WILMER RHODES, *Petitioner*, -vs- GRANT K. COOK, *Respondent*.	No. 81545 ORAL RULING FROM BENCH

(At the close of all the testimony and argument of counsel in the above entitled matter, the following oral ruling was delivered on March 22, 1965 from the bench):

THE COURT: First of all I am grateful to counsel on both sides of this case for the excellent presentations they have made.

The Court is called upon to discharge one of its most important duties, and that is to determine whether or not the constitutional private right of a citizen has been violated by provisions of the Snohomish County Code regulating plumbing. Plaintiff is the owner of property in Snohomish County and desires to repair a house and install plumbing by doing his own work. He has applied to the proper County official for a permit. This permit has been refused because plaintiff admits that he intends to repair this property for the purpose of rental, and that he does not intend to occupy the premises himself. The County ordinance attacking the problem of protecting the public by insuring proper and sanitary plumbing has several angles, only two of which we are herein concerned with. It prohibits all persons from doing plumbing work on any premises without securing a permit. These permits are issued to two classes: (1)

a licensed plumber, and (2) to an owner who desires to plumb his own place for personal occupancy. Plaintiff has made no attempt to qualify under the statute as a plumber, although it is clear from the code that he could make application to qualify as a plumber and thus be permitted, if he passed the examination, to plumb his own house. He has made no attempt to do that, contending that the restriction in the code against his doing so as an owner is unreasonable, unconstitutional, and has no relationship to health and welfare; because he is willing to comply with all provisions of the code as to the manner with which work is done by submitting proper drawings which must be approved by proper authority, and complying in every way with the provisions of the code. The only place where he falls down is that he isn't a licensed plumber.

It is conceded and, of course, it is obvious, that the regulation of plumbing by government is a perfectly valid constitutional exercise of governmental power. There is no higher obligation of government than to protect the health of its citizens. On the other hand, courts, and those who have responsibility in this area, must protect the constitutional rights of a private property owner in his right to use his property as he pleases as long as he doesn't hurt his neighbor, or contribute to some undesirable result or evil. It is clear that the general area upon which government has entered here is a valid area. When we have determined that we must remember a basic principle of constitutional law, particularly as it relates to police power, that when it is determined that government is in a legitimate area, that the legislative authority is given a very wide discretion in determining how it shall attack an evil, and a very wide discretion in the methods it adopts to protect the public, particularly in regard to health. It is clear, therefore, that the licensing provisions are valid. It is true that anybody can properly plumb a house in accordance with the code if they are skilled enough, but it certainly is within governmental power to protect the public from those who may not be skilled to require one

to qualify to engage in the business when holding out as a plumber. Plaintiff does not attack the validity of the licensing ordinance as it relates to commercial plumbers.

It has been proven here that the plumbing inspector may protect the health of the citizens of this county by requiring proper drawings, by making inspection of the premises to see that the work is done in a workmanlike manner, that the materials are in accordance with the code, that the materials are placed in a proper way, and he has very broad power in making inspection, which would in most instances, I have little doubt, adequately protect the public. But the issue before the Court is does the County have the right to go further and require that everyone must hire a licensed plumber to do plumbing on a premises to be occupied by someone other than the owner? That is the ultimate and basic question. It has been pointed out to me by the County Plumbing Inspector that work done by licensed plumbers in most instances is of better quality than that of home owners, and that the drawings and plans of licensed plumbers are more accurate and better than that of home owners, and that would appear to be a reasonable conclusion. He tells me that it takes more time to deal with a person other than a licensed plumber, that inspections are not requested in a timely manner in many instances, and that more often the non-plumber owner does not follow the inspection requirements as minutely or as well as a licensed plumber. In view of these circumstances, is it valid for the government to say, "Well, Mr. Plaintiff, even though you own these premises you must hire a licensed plumber or you have to qualify as a plumber if you are to plumb your house for other people." I cannot say that this provision of the ordinance is unlawful, unreasonable, arbitrary, capricious, or unnecessary. I hasten to add that if I were a member of the board of county commissioners, city council or state legislature, the argument presented by plaintiff in this case would be very compelling and I would vote against it unless it allowed a man to plumb his own premises according to

the code. I would be more concerned with what is done, rather than who did it. This is not to say as a judicial officer I can condemn the lawmaker who believes these other provisions to be necessary to protect the public and provide a workable act to be enforced without complications, particularly when in an area where government obviously has a right to be. Even provisions which may be onerous to some extent to the property owner must be born if they relate to health and have direct relationship to the problem and evil to be remedied. I cannot say that the rights of property, and rights of a man to use his own property as he sees fit, must not yield, at least to this extent that if he is going to repair his property for other people by doing plumbing, that he must hire a licensed plumber to do it or qualify as a plumber himself. It is within reason. I am conscious of the fact that many of these areas of government regulation are promulgated by those who are interested in a certain art or profession and that the regulations are promulgated by people who are interested for not wholly unselfish reasons. This applies to doctors, beauticians, lawyers, as well as plumbers. The fact remains that even though they be parties who proposed the passage of such legislation, it is none the less justified in order to advance the public health and is valid.

As to the argument relating to classification, in that there is no sound distinction between a man who plumbs a house he occupies himself and a house he owns to be occupied by others, there is a distinction,—it permits a man to plumb his own house if he is going to live there himself, while if he is to allow others to occupy the place, he cannot do so. Some protection along this line is required in order to prevent subterfuge and be used as a device by taking ownership of property for the bare purpose of plumbing it and then selling it. I see where it bears some relationship to the effective enforcement of the Act.

As to the argument of the County that the plaintiff has not exhausted his remedy, I find no merit. The defendant will prevail.

APPENDIX B-2

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SNOHOMISH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SNOHOMISH

WILMER RHODES, *Petitioner*, vs. GRANT K. COOK, *Respondent.*	NO. 81545 FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER having come regularly on for trial on the 30th day of December, 1964 and on March 22, 1965 before the Honorable Charles R. Denney, Judge of the above-entitled Court, the petitioner, Wilmer Rhodes, appearing in person and with his attorneys, Edward A. Niemeier and Bruce L. Engel, the respondent, Grant K. Cook, appearing in person and with his attorney, Sten H. Dagg, Deputy Prosecuting Attorney for Snohomish County, State of Washington, upon petitioner's application for Writ of Mandamus wherein petitioner prayed that the Court issue a Writ of Mandamus directed to Grant K. Cook as Chief Plumbing Inspector for Snohomish County to issue petitioner a plumbing permit, and the Court having heard testimony on the issues in the Cause, having considered the exhibits admitted into evidence, having considered the evidence, files, records, affidavits herein and being otherwise fully advised in the premises, now makes the following:

FINDINGS OF FACT

I

Petitioner, Wilmer Rhodes, is and was on October 15, 1964 the owner of a house and real property com-

monly known as 1805-100th Street, South West, Everett, Snohomish County, Washington.

II

On October 15, 1964 petitioner applied to respondent, Grant K. Cook, Chief Plumbing Inspector for Snohomish County, for a permit to do plumbing on said property. Petitioner desired to personally perform all labor in connection with the installation of plumbing fixtures on the property, but petitioner did not intend to occupy the house as his own personal residence and, in fact, petitioner intended to lease the house as living quarters for others.

III

Grant K. Cook, as Chief Plumbing Inspector for Snohomish County, refused to issue a plumbing permit to petitioner to plumb said property for the reason that the UNIFORM PLUMBING CODE as issued for the year 1961 by the WESTERN PLUMBING OFFICIALS' ASSOCIATION and adopted as an Ordinance of Snohomish County by proper resolution of January 22, 1962 provides in Section 1.10 thereof that:

(a) "No permit shall be issued to any person to do or cause to be done any plumbing or drainage work regulated by this code, except to a person holding a valid unexpired and unrevoked Plumbing Contractor's Certificate of Qualification or Registration as required by Section 2.3, except when and as otherwise hereinafter provided in this section.

* * * *

(c) Any permit required by this code may be issued to any person to do any plumbing or drainage work regulated by this code in a single family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings in the event that any such person is the bona fide

> owner of any such dwelling and accessory buildings and quarters, and that the same are occupied by or designed to be occupied by said owner, provided, that said owner shall personally purchase all material and shall personally perform all labor in connection therewith."

and petitioner did not qualify for a permit under said Sections.

IV

Petitioner did not qualify for a permit under Section 1.10(a) for the reason that he did not hold a valid unexpired and unrevoked Plumbing Contractor's Certificate of Qualification or Registration as required by Section 2.3 of said Code and petitioner had made no attempt to qualify under Section 2.3, although Section 2.3 and succeeding sections of said Code allow petitioner to make application for said Certificate and if he passed the examination, to obtain said Certificate and thereby obtain a permit. Petitioner did not qualify for a permit under Section 1.10(c) for the reason that he did not intend to occupy said house as his own residence, but intended to lease the house as living quarters for others.

V

Petitioner is willing to comply with all other requirements of said Code, but contends that Section 1.10(c) of said Plumbing Code is unlawful in that in denying petitioner a permit to do plumbing on said property, said Section 1.10(c) violates Amendment XIV of the United States Constitution and Article I, Sections III and XII of the Washington Constitution by imposing unnecessary, discriminatory, arbitrary, oppressive and unreasonable restrictions upon petitioner's lawful right to carry on private business on his property, and by denying to petitioner equal protection under the Law.

VI

Section 1.10(a) of said Code is necessary; bears a reasonable relationship to the public health, safety and welfare; and is a reasonable classification because:

Plumbing work done by licensed plumbers, i.e. those qualifying for a permit under Section 1.10(a), in most instances, is of a better quality than that done by unlicensed plumbers on their own residences, i.e. those persons obtaining a permit under Section 1.10(c). The drawings and plans of said licensed plumbers are generally more accurate and better than that of persons doing plumbing on their own residences under a permit granted under Section 1.10(c). There is a greater risk of persons doing plumbing on their own residences under a permit granted pursuant to Section 1.10(c) of their buying plumbing materials that are inferior and do not meet the minimum material requirements of said Code than when acquisition of materials is made by a licensed plumber under Section 1.10(a). The work of a person obtaining a permit under said Section 1.10(c) to do work on his own residence generally requires a greater degree of inspection than work done by a licensed plumber under Section 1.10(a). Persons doing plumbing under a permit granted pursuant to Section 1.10(c) on their own residence generally do not request inspections in as timely a manner as licensed plumbers under Section 1.10(a). A person doing plumbing on his own residence under a permit granted pursuant to Section 1.10(c) generally does not follow inspection requirements as minutely as a licensed plumber doing work pursuant to a permit granted under Section 1.10(a). Generally, the two plumbing inspectors for Snohomish County must use more time to ascertain whether work done by a person on his own residence by himself, pursuant to a permit granted under Section 1.10(c), meets the requirements of said Code than work done by licensed plumbers under Section 1.10(a).

VII

The UNIFORM PLUMBING CODE, 1961 Edition of the WESTERN PLUMBING OFFICIALS' ASSOCIATION, as adopted by Snohomish County, on Page 1-a, Paragraph 2 thereof, provides:

"If any section, subsection, sentence, clause, phrase

or portion of this code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this code."

Sections 1.7 and 1.8 of said Code provide that no plumbing work shall be commenced on any premises until a permit to do such work has been obtained pursuant to the Code and any violation of the Code provisions by said sections is deemed a misdemeanor punishable by fine and/or imprisonment.

VIII

Section 1.10(c) is lawful, necessary, bears a reasonable relationship to the public health, safety and welfare and is a reasonable classification and is not discriminatory, arbitrary, oppressive and unreasonable because it permits a person to plumb his own house if he is going to live there himself; however, if he intends the house as rental property for occupancy by others, he may not himself do the plumbing, unless he meets the requirements of 1.10(a) by obtaining a permit after obtaining a Plumbing Contractor's Certificate of Qualification or Registration as provided by said Code.

IX

Section 1.10(c) bears a reasonable relationship to the effective enforcement of the entire plumbing code, is necessary, and is a reasonable classification for the reason that it prevents subterfuge and provides protection from a person taking ownership of property for the purpose of being able to plumb it himself without having to meet the licensing requirements of the Code for persons doing plumbing for others, i.e. obtaining a Plumbing Contractor's Certificate of Qualification or Registration.

FROM THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

I

That the Court has jurisdiction over the subject matter and the parties to this action and this matter is properly before the Court.

II

Petitioner does not have a plain, speedy and adequate remedy at law.

III

The enactment by Snohomish County of January 22, 1962 adopting by ordinance the UNIFORM PLUMBING CODE as issued for the year 1961 by the WESTERN PLUMBING OFFICIALS' ASSOCIATION wherein Snohomish County regulates the installation of plumbing is a valid exercise of police power.

IV

Section 1.10(c) of said Code which provides:

> (c) "Any permit required by this code may be issued to any person to do any plumbing or drainage work regulated by this code in a single family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings in the event that any such person is the bona fide owner of any such dwelling and accessory buildings and quarters, and that the same are occupied by or designed to be occupied by said owner, provided, that said owner shall personally purchase all material and shall personally perform all labor in connection therewith."

in regulating the installation of plumbing is a valid exercise of police power and said Section is reasonably related to the public health, safety and welfare of Snohomish County.

V

Section 1.10(c) of said UNIFORM PLUMBING CODE does not deprive petitioner of life, liberty or property without due process of law as provided by Amendment XIV, Section I, of the United States Constitution and Article I, Section III, of the Washington State Constitution.

VI

Section 1.10(c) of said UNIFORM PLUMBING CODE is a reasonable classification and does not deny to petitioner equal protection of the laws as is provided for by Amendment XIV, Section I, of the United States Constitution and Article I, Section XII, of the Washington State Constitution.

VII

Petitioner is not entitled to a Writ of Mandamus, and the Alternative Writ of Mandamus issued herein on November 20, 1964 should be dismissed.

DONE IN OPEN COURT this 4 day of May, 1965.

CHARLES R. DENNEY

JUDGE

Presented by:

STEN H. DAGG

STEN H. DAGG, Deputy Prosecuting Attorney
for Snohomish County, Attorney for Respondent

Copy Received, Approved only as to Form, and
Notice of Presentment Waived this 3rd day of
May, 1965.

E. A. NIEMEIER

of Attorneys for Petitioner

BLANK

PAGE

APPENDIX B-3

JUDGMENT OF DISMISSAL OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SNOHOMISH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SNOHOMISH

WILMER RHODES, *Petitioner,* vs. GRANT K. COOK, *Respondent.*	NO. 81545 JUDGMENT OF DISMISSAL

THIS MATTER having come regularly on for trial on the 30th day of December, 1964 and on March 22, 1965 before the Honorable Charles R. Denney, Judge of the above-entitled Court, the petitioner, Wilmer Rhodes, appearing in person and with his attorneys, Edward A. Niemeier and Bruce L. Engel, the respondent, Grant K. Cook, appearing in person and with his attorney, Sten H. Dagg, Deputy Prosecuting Attorney for Snohomish County, State of Washington, upon petitioner's application for Writ of Mandamus wherein petitioner prayed that the Court issue a Writ of Mandamus directed to Grant K. Cook as Chief Plumbing Inspector for Snohomish County to issue petitioner a plumbing permit, and the Court having heard testimony on the issues in the cause, having considered the exhibits admitted into evidence, having considered the evidence, files, records, affidavits herein and having made and entered its Findings of Fact and Conclusions of Law and being otherwise fully advised in the premises, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the application of petitioner, Wilmer Rhodes, for a Writ of Mandamus directed to respondent,

Grant K. Cook, requiring Grant K. Cook, as Chief Plumbing Inspector for Snohomish County, to issue petitioner a plumbing permit, be and the same is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Alternative Writ of Mandamus issued out of this Court on November 20, 1964, be and the same is hereby dismissed.

DONE IN OPEN COURT this 4 day of May, 1965.

CHARLES R. DENNEY

JUDGE

Presented by:

STEN H. DAGG

STEN H. DAGG, Deputy Prosecuting Attorney

Copy Received and Approved only as to Form and Notice of Presentment Waived this 3rd day of May, 1965.

E. A. NIEMEIER

of Attorneys for Petitioner

APPENDIX C

STATE OF WASHINGTON V. FRANK RANDALL, OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF KITSAP

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KITSAP COUNTY

STATE OF WASHINGTON,
Plaintiff,
- vs -
FRANK RANDALL,
Defendant.

NO. 44599
COURT'S ORAL OPINION

BE IT REMEMBERED that on Tuesday, the 27th day of October, 1964, at the hour of 9:30 A.M., the above-entitled and numbered cause came regularly on for hearing before the Honorable Frank W. Ryan, one of the judges of the above-entitled court, sitting in Department No. 2 thereof, at the Kitsap County Courthouse in the City of Port Orchard, County of Kitsap, State of Washington.

The plaintiff, State of Washington, appearing through the Prosecuting Attorney, James Munro; the defendant appearing in person and through his attorney, Edward A. Niemeier, of the Law Firm of Niemeier & Hamilton, Poulsbo, Washington.

WHEREUPON, on Wednesday, the 28th day of October, 1964, the following oral opinion was issued by the Court:

THE COURT: Members of the Jury: During your absence, counsel for the defendant has made a motion to dismiss this case at the close of the plaintiff's evidence.

The defendant has made this motion on the grounds of lack of sufficient evidence to convict and on the further grounds that the ordinance involved is unconstitutional or the section of the ordinance involved is unconstitutional.

This motion presents legal questions and you know from the experience you have had on the jury and from reading your juror's pamphlet, that the Court must determine the law. The jury determines the fact.

Now, the question presented to me at this time is purely a question of law because the only facts before the Court are those presented by the testimony of Mr. Love, the Plumbing Inspector, and this is the total case for the State. The State has rested its case, so there is no more evidence upon which to base a conviction except the testimony of Mr. Love. A legal question has been presented to the Court as to whether or not this case should be dismissed at this time.

Now, long before this, a motion was made by the defendant, months ago, to dismiss on these same grounds. I held at that time for the State and against the defendant because there was no evidence before the Court at that time; no evidence whatsoever upon which to determine this key question involved here which is whether or not this section of the ordinance is necessary for the protection of the public's health, welfare, and safety. There is a nice Constitutional question here and I think you can see what it is. It is the conflict between the rights of society at large, the right to be protected in matters of health, safety, and welfare.

Generally speaking, talking about plumbing ordinances in a very general way, I think you can recognize that they are necessary for public health, safety, and welfare. You might have a neighbor who would have a septic tank that would overflow; there may be broken plumbing with fluid pouring out, or an open drain. There are reasons for this type of an ordinance, but then we get to a question of whether some particular phase of it does have any direct connection with public health, welfare, and safety, and that is where we are here.

Or [sic.] course, there is a great deal of difference between liberty and license. We have liberty in this county, but that doesn't mean we have license. Our liberty ends

where the other fellow's rights begin. It must be with due respect and regard for the rights of others that we exercise the liberty that we as individuals have and that is the problem here. So, although I am going to dismiss this case at this time, I thought the jury had a right to be here to know why I am doing this. I don't want you to think that I am usurping your rights or your power. I am not. I am deciding this strictly on a question of law and I thought you had a right to know why.

Mr. Love testified that if a job is properly done, it makes no difference. It is of no consequence as to who has done the job because the inspecting is the final test and determines whether or not it has been properly done. He further testified that after the inspection has been completed, all has been done that can be done to protect the public's health, welfare, and safety. If that is the case, then there is no reason why a person cannot perform plumbing on his own premises. If there is no danger to other people, and Mr. Love has testified that there isn't any danger to other people, that is the answer to it.

There is a difference between this and licensing a man to practice the trade of plumbing in a community and to hold himself out as a plumber. That is something entirely different because he is then soliciting business from other people and if he is incompetent, if he is unqualified, he would be practicing a fraud upon the public to begin with. He might give people the wrong advice; he might tell them they need two septic tanks when they didn't need anything at all. There is no end to what he might do. But we are not concerned with that.

We are concerned here with a right of a person to do this work on his own property and the only distinction made by the ordinance is as to whether this is a single family dwelling to be occupied by him and his family alone or whether it may be used by other people. This is the only distinction, but it is still on his own property. He is not holding himself out, he is not asking

other people to trade with him or do business with him, or to pay him money for his advice or his work. It is his own property; it is his own business. If the public health is protected, and the testimony of the inspector, Mr. Love, is that the health is protected if the job is inspected, it makes no difference who has done it—whether an amateur or a professional, whether a large contractor in the State of Washington or the man who owns the property—the inspector can tell by his test as to whether the job has been well done and safely done for the protection of society at large.

There is precedent for this in the State of Washington. There is a case decided by our State Supreme Court, *Spokane v. Latham*. This was decided in 1935. In that case the City of Spokane has an ordinance permitting a Durham system of plumbing—whatever that is, the experts here perhaps can tell me, I don't know—but it prohibited this type of plumbing in three-story buildings, but permitted it in buildings of over three stories. Our Supreme Court held that the ordinance was unconstitutional on the very basis that I am holding this section of the ordinance is unconstitutional. *Spokane v. Latham*, 181 Wash. Reports, 162:

> ". . . (1) An ordinance covering the material of pipe, the size thereof to be used in plumbing, for the licensing of plumbers, and the inspection of the plumbing installed, is a valid exercise of the police power. *New Castle v. Withers*, 291 Pa. 216, 139 Atl. 860, 57 A.L.R. 132; *Kleinheim v. Bentley*, 98 Kan. 431, 157 Pac. 1190; *Tacoma v. Fox*, 158 Wash. 325, 290 Pac. 1010. The reason such ordinances are sustained is because they bear a direct and substantial relation to the public health or the public welfare.
>
> "In the case now before us, there is no question of public health involved. The plumbing inspector of the city of Spokane, called as a witness by the city, testified:
>
> " 'Q. Now, Mr. Flickenger, then you still say that

so far as the health of the people are concerned and the sanitary conditions, that the Durham System of plumbing is just as good in a one-story building as it is in a ten-story building; *A.* I do. . . . *Q.* As a matter of fact the objection to the Durham, is largely on the part of the lead manufacturers and the plumbers who have learned to wipe joints, and not on account of public health. *A.* You couldn't make a public health issue out of it. *Q.* Public health isn't an issue in it? *A.* I don't think it is. Either one must be properly installed in order to protect the health.'

"The question of the public health not being an issue, the only remaining question would be whether the prohibiting of the Durham system of plumbing in a building of less than three stories, while it is permitted in all buildings of three stories or over, bears any reasonable or substantial relation, to the public welfare. If it does bear such relation, it is a valid enactment; otherwise, it is invalid. *Brown v. Seattle*, 150 Wash. 203, 272 Pac. 517; *Patton v. Bellingham*, 179 Wash. 566, 38 P. (2d) 364."

That is the same thing we have here. If this is properly installed, regardless of who did it, public health is protected. The Supreme Court went on to say:

"Whether the facts of a particular case warrant the assertion of police power, is a judicial question to be determined by the courts. *Bowes v. Aberdeen*, 58 Wash. 535, 109 Pac. 369, 30 L.R.A. (N.S.) 709. If a state of facts can reasonably be presumed to exist which would justify the ordinance, the court will presume that such facts did exist, and that the ordinance was passed for this reason. *State v. Pitney*, 79 Wash. 608, 140 Pac. 918, Ann. Cas. 1916A 209."

When this point was raised before in the present case, it was purely a question of law without any facts whatsoever in support of it. However, now all of the facts that the State can produce are before the Court

and those facts clearly show and can be understood and interpreted in only one way. It is not a matter where reasonable minds could differ in any way. Mr. Love has said, "Yes, either way, regardless of who does it, it is equally safe."

Now, as to the point raised by counsel, the question of the amount of fees. I don't think it is necessary to pass on that.

The only thing before the Court is the affidavit. Mr. Love wasn't aware of it. He didn't know about it. But the affidavit of the Chief of the Department was that they had just barely balanced the cost of operation. If those are the facts, I don't think the fees would be unreasonable.

The question of adoption of this Code by reference was provided for by the State Legislature in the 1961 Session in Chapter 27 which was prior to the time that this ordinance was adopted by the County.

Now, further, in the brief of amicus curiae, as pointed out by counsel, an attorney who is not appearing at this time in this case but who appeared as amicus curiae on behalf of certain persons interested in bringing about the conviction of the defendant, it was virtually conceded that if the facts were without question or contest, such as they now appear to be, that the ordinance must be held unconstitutional. It was said there:

> "If it is true that inspection alone is a complete safeguard for the public, then the argument of the defendant is well taken and a further restriction is both unnecessary and unreasonable. It would seem to follow that the State should have no further interest in regulating plumbing. In other words, the entire licensing provisions including those portions regulating people holding themselves out to the public as plumbers, would seem to be an unnecessary restriction on the right to engage in a 'lawful occupation' and should therefore fail."

So, it is virtually conceded, at least by persons who have put themselves in a position, allied themselves with the prosecution here, that it must be conceded under the facts as they now exist that the Court must hold that this section of the ordinance is unconstitutional.

I want to say in defense of our Prosecuting Attorney, and that may seem strange—I don't think Prosecuting Attorneys have to be defended very often; they are generally on the other side of the fence—I know Mr. Munro has felt duty-bound to bring this prosecution even though he has been aware at all times that there was a serious Constitutional question involved. But he is the Prosecuting Attorney. It is his duty to represent the County and to enforce its ordinances. This ordinance was adopted by our County Commissioners, and it was his duty to prosecute this case. I am sorry that it could not have been more easily disposed of. The offense involved here is not serious. I think it calls for a penalty of not less than $25.00, nor more than $100.00 fine, or not more than ninety days in jail, or both. It is a petty offense in many ways, and yet I think you all can see that there are some ramifications and undertones that go far deeper than just a minor law violation. So in those respects, it isn't an important case. In fact, the cost of calling the jury together here alone is about five to six times what the maximum penalty would be, unless you can assess ninety days in jail at a higher price. But these questions involved may be important questions, Constitutional questions. We could go on for hours and hours discussing the ramifications of these Constitutional questions that are involved here.

I feel the only thing presented to the Court at this time is a question of law and I feel that I must rule on that, and thus must dismiss the case.

BLANK

PAGE

APPENDIX D

PERTINENT PROVISIONS OF THE SNOHOMISH COUNTY, STATE OF WASHINGTON UNIFORM PLUMBING CODE

Sec. 1.4—Duties of the Administrative Authority

The Administrative Authority shall maintain public office hours necessary to efficiently administer the provisions of this code and amendments thereto and shall perform the following duties:

(1) Require submission of, examine and check plans and specifications, drawings, descriptions, and/or diagrams necessary to show clearly the character, kind and extent of plumbing work covered by applications for a permit and upon approval thereof shall issue the permit applied for.

(2) Collect all fees for permits issued as provided by this code, issue receipts therefor in duplicate, the duplicate copy of which shall be maintained as a record of his office.

(3) Administer and enforce the provisions of this code in a manner consistent with the intent thereof and shall inspect all plumbing and drainage work authorized by any permit to assure compliance with provisions of this code or amendments thereto, approving or condemning said work in whole or in part as conditions require.

(4) Issue upon request a Certificate of Approval for any work approved by him.

(5) Condemn and reject all work done or being done or materials used or being used which do not in all respects comply with the provisions of this code and amendments thereto.

(6) Order changes in workmanship and/or materials essential to obtain compliance with all provisions of this code.

(7) Investigate any construction or work regulated by this code and issue such notices and orders as provided in Section 1.6.

(8) Keep a complete record of all the essential transactions of his office.

(9) Transfer all fees collected by him to the proper authority provided by law to receive such funds.

(10) Maintain an official register of all persons, firms or corporations lawfully entitled to carry on or engage in the business of plumbing or to labor at the trade of plumbing to whom a Plumber's Certificate of Qualification has been issued in accordance with provisions of Part Two of this code.

Sec. 1.8—Permit Required

(a) No plumbing or drainage work shall be commenced in any building or premises until a permit to do such work shall have been first obtained from the Administrative Authority.

(b) A separate permit shall be obtained for each building or structure.

(c) No person shall allow any other person to do or cause to be done any plumbing or drainage work under any permit secured by such person except persons in his employ.

Sec. 1.9—Work Not Requiring Permit

No permit shall be required in the case of any repair work as follows: The stopping of leaks in drains, soil, waste or vent pipe, provided, however, that should any trap, drainpipe, soil, waste or vent pipe be or become defective and it becomes necessary to remove and replace the same with new material in any part or parts, the same shall be considered as such new work and a permit shall be procured and inspection made as hereinbefore provided. No permit shall be required for the clearing of stoppages or the repairing of leaks in pipes,

valves or fixtures, when such repairs do not involve or require the replacement or rearrangement of valves, pipes, or fixtures.

Sec. 1.10—To Whom Permits May Be Issued

(a) No permit shall be issued to any person to do or cause to be done any plumbing or drainage work regulated by this code, except to a person holding a valid unexpired and unrevoked Plumbing Contractor's Certificate of Qualification or Registration as required by Section 2.3, except when and as otherwise hereinafter provided in this section.

(b) No permit shall be issued to any person to do or cause to be done any sewer or private sewage disposal system work regulated by this code, except to a person holding a valid unexpired and unrevoked Sewer or Sewage Disposal Contractor's Certificate of Qualification or Registration as required by Section 2.3.

(c) Any permit required by this code may be issued to any person to do any plumbing or drainage work regulated by this code in a single family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings in the event that any such person is the bona fide owner of any such dwelling and accessory buildings and quarters, and that the same are occupied by or designed to be occupied by said owner; provided, that said owner shall personally purchase all material and shall personally perform all labor in connection therewith.

Sec. 1.11—Application for Permit

Any person legally entitled to apply for and receive a permit shall make such application on forms provided for that purpose. He shall give a description of the character of the work proposed to be done, and the location, ownership, occupancy and use of the premises in connection therewith. The Administrative Authority may require plans, specifications or drawings and such other information as he may deem necessary.

If the Administrative Authority determines that the plans, specifications, drawings, descriptions or information furnished by the applicant is in compliance with this code, he shall issue the permit applied for upon payment of the required fee as hereinafter fixed.

Sec. 1.13—All Work to be Inspected

All plumbing and drainage systems shall be inspected by the Administrative Authority to insure compliance with all the requirements of this code.

Section 2.1—Definition of Plumbers and Contractors

(a) A Plumbing Contractor is a person who may conduct, carry on or engage in the business of plumbing.

* * * *

Sec. 2.2—General Provisions

(a) It shall be unlawful for any person to conduct, carry on or engage in the business of plumbing or act in the capacity of a plumbing contractor, without first having had issued to him a valid Plumbing Contractor's Certificate of Qualification or Registration by the Board of Plumber Examiners.

* * * *

Sec. 2.3—Application for Certificate of Qualification or Registration

Any person who is required by this code to possess a plumber's Certificate of Qualification or Registration shall make application therefor to the Board of Plumber Examiners on application blanks provided for that purpose by the secretary of said Board and pay the fee as hereinafter provided.

Sec. 2.7—Issuance of Certificate of Qualification or Registration

The Board of Plumber Examiners shall issue Certificates of Qualification or Registration pursuant to the following provisions:

(a) Plumbing Contractors' Certificates of Qualification or Registration shall be issued to every person who makes application for such certificate, pays the required fee and successfully passes the examination conducted by the Board of Plumber Examiners, provided however, that in lieu of an examination the Board may issue such a Certificate to any person who makes application therefor, pays the required fee and possesses and presents to the Board a valid Certificate of Qualification or Registration issued to him by any other governmental agency giving an examination the scope and character of which, in the opinion of the Board, is at least equal to that given by the Board of Examiners.

(b) Journeyman Plumber's Certificates of Qualification or Registhation (sic.) shall be issued to every person who makes application for such certificate, pays the required fee and successfully passes the examination conducted by the Board of Plumber Eaminers, provided, however, that the Board may issue such a Certificate to any person who makes application therefor, pays the required fee and possesses and presents to the Board a valid Journeyman Plumber's Certificate of Qualification or Registration issued to him by any other governmental agency giving an examination the scope and character of which, in the opinion of the Board, is at least equal to that given by the Board of Examiners.

Sec. 306—Plans Required

The Administrative Authority may require the submission of plans, specifications, drawings, and such other information as he may deem necessary, prior to the commencement of, and at any time during the progress of any work regulated by this code.

The issuance of a permit upon plans and specifications shall not prevent the Administrative Authority from thereafter requiring the correction of errors in said plans and specifications or from preventing construction operations being carried on thereunder when in violation of this code or of any other pertinent ordinance or from revoking any certificate of approval when issued in error.

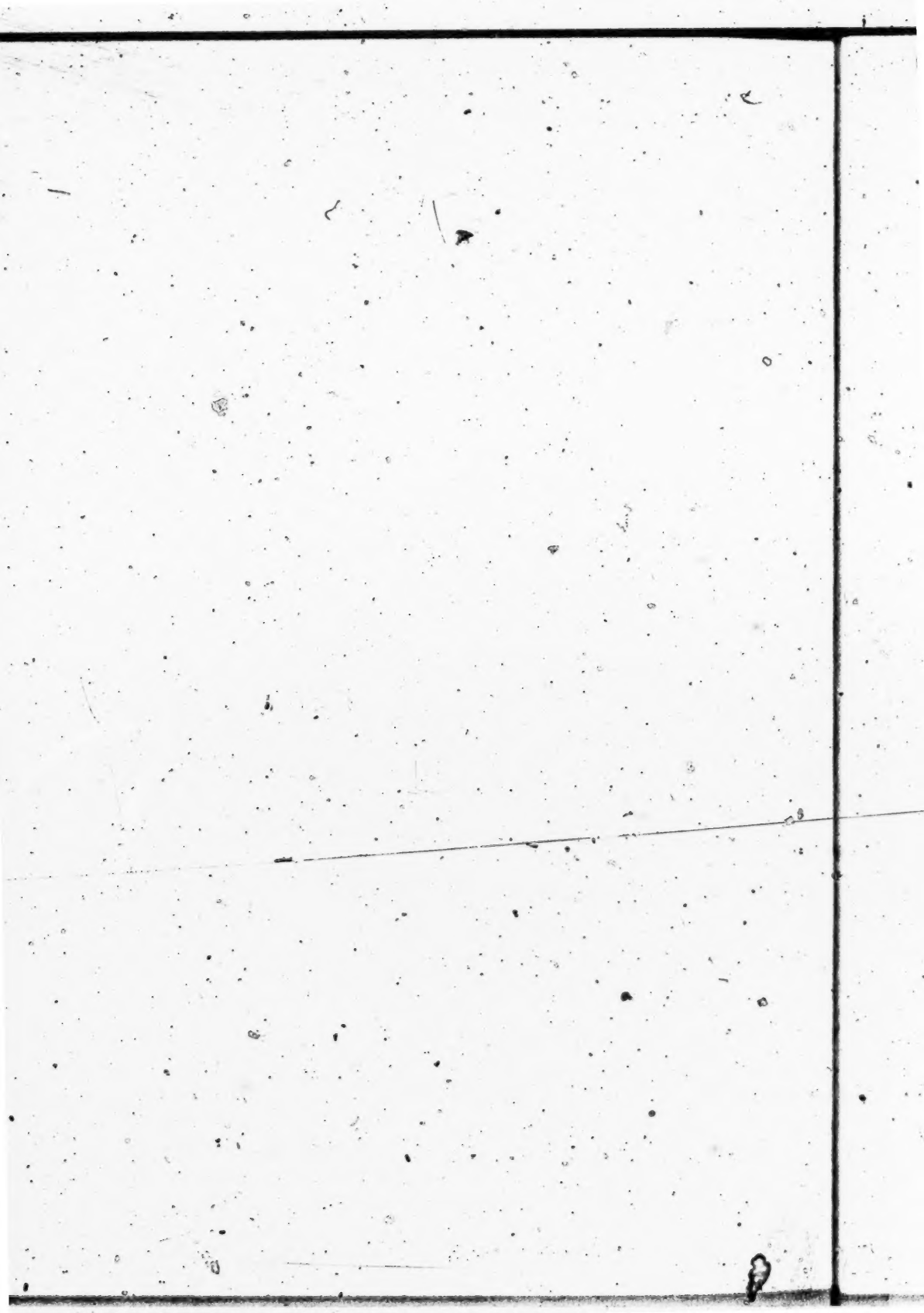
Sec. 309—Workmanship

(a) All design, construction and workmanship shall be in conformity with accepted engineering practices and shall be of such character as to secure the results sought to be obtained by this code.

* * * *

Sec. 321—Health and Safety

Whenever compliance with all the provisions of this code fails to eliminate or alleviate a nuisance, or any other dangerous or insanitary condition which may involve health or safety hazards, the owner or his agent shall install such additional plumbing and drainage facilities or shall make such repairs or alterations as may be ordered by the Administrative Authority.



SUPREME COURT, U. S.

APR 30 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1283

STATE ex rel. WILMER RHODES, *Appellant*

vs.

GRANT K. COOK, *Appellee.*

On Appeal from the Supreme Court of the State of Washington

BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANT'S JURISDICTIONAL STATEMENT

Counsel for Amici Curiae:

CALBOM, WALKER, COX & ANDREWS
Park Plaza Building
Longview, Washington 98632

DAILY JOURNAL OF COMMERCE

INDEX

	PAGE
I. Preliminary Statement	1
II. Interest and Description of Amici	2
III. Argument	3
A. The History and Posture of the Case	3
B. The Questions Presented Are of National Importance	5
IV. Conclusion	12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1283

STATE ex rel. WILMER RHODES,
Appellant

vs.

GRANT K. COOK,
Appellee.

On Appeal from the Supreme Court of the
State of Washington

BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANT'S JURISDICTIONAL STATEMENT

I PRELIMINARY STATEMENT

Pursuant to Rule 42 of the Rules of this Court, Pay'n Pak Stores, Inc., Pay & Pack Electric & Plumbing Supply Co., Beaver Electric & Plumbing Supply, Grover Electric & Plumbing Supply Co., Perry Electric & Plumbing Supply Co., Apex Stores, Hawk Electric & Plumbing Supply, Inc., Falcon Plumbing & Electric Supply, Buzzard Electric & Plumbing Supply, Buzzard Electric & Plumbing Supply, Inc. of Seattle, Eagle Electric & Plumbing, Eagle Electric & Plumbing Inc. of Moses Lake, file this

brief of *amici curiae* in support of the Appeal and Jurisdictional Statement of Appellant, Wilmer Rhodes. The parties have granted their consent to the filing of this brief.

II INTEREST AND DESCRIPTION OF AMICI

Pay 'n Pak Stores, Inc., is a Washington Corporation, having thirteen subsidiaries engaged in the electrical and plumbing retail supply business in the States of Washington, Oregon, and California, with its principal office in Longview, Washington. The other *amici* are independent businesses located in Denver, Colorado; Medford, Coos Bay, Portland, Beaverton, Salem and Eugene, Oregon; Great Falls, Montana; Vancouver, Spokane, Yakima, Seattle, and Moses Lake, Washington; and are engaged in the same line of business. All of the *amici* concentrate on sales of electric and plumbing supplies and equipment to the "do-it-yourself" market. Their total sales of plumbing supplies are estimated to have been between five and six million dollars in 1967. There are a substantial number of other businesses in the West and throughout the United States which similarly concentrate on sales of plumbing supplies to the "do-it-yourself" market. Retail sales of plumbing equipment and supplies to the "do-it-yourself" market constitute approximately 85 per cent of retail sales of all plumbing supplies and equipment by *amici curiae*.

The opinion of the Supreme Court of the State of Washington upholding the provisions of the Snohomish County Plumbing Code will have a direct adverse impact on all of the *amici curiae* and other comparable businesses in all the places where a similar code is in effect. The Western Plumbing Officials Uniform Plumbing Code, on which the Snohomish County Plumbing Code was based, has been used in a number of Western States, and plumbing contractors and unions are striving to get this Code even more widely adopted. Provisions similar to the provisions of the Snohomish County Plumbing Code challenged in this case are found in many other plumbing codes throughout the United States.

III ARGUMENT

A. The History and Posture of the Case

The Opinion of the Supreme Court of the State of Washington dated November 9, 1967 is reported in 72 Wash. 2d 431, 433 P2d 677 and is printed in Appendix A to Appellant's Jurisdictional Statement. The Opinion of the Superior Court of Snohomish County Washington is unreported, but is printed in Appendix B to the Jurisdictional Statement. The judgment sought to be reviewed is the opinion of the Supreme Court of the State of Washington, made a final judgment by the denial of Appellant's Petition For Rehearing on January

3, 1968. Notice of Appeal was filed by the Appellant on March 19, 1968, and the Jurisdictional Statement was filed in this Court on April 1, 1968. Appellant invoked the jurisdiction of this Court under 28 U.S.C., Section 1257(2).

The Jurisdictional Statement filed by Appellant presents a question whether Section 1.10(c) of the Snohomish County Plumbing Code, which prohibits issuance of a plumbing permit to non-occupying owners of single-family dwellings unless they qualify as plumbing contractors, unjustly discriminates against such persons in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. The Jurisdictional Statement also raises an issue as to whether this provision of the Code offends the Due Process Clause of the Fourteenth Amendment. Under the Code, upheld by the Supreme Court of the State of Washington, a home-owner cannot even replace a simple valve in a residence which he owns but is not going to occupy. Moreover, a resident non-owner may not do any plumbing work on the premises, even with the owner's consent and regardless of the length of his lease. This provision of the Code was adopted as a result of the efforts of plumbing contractors to effectively prohibit self-help plumbing work in all dwellings not occupied by the owner. By virtue of this Code, the plumbing contractors and unions have achieved an effective

monopoly of the vast bulk of plumbing work in Snohomish County.

The pertinent provisions of the Snohomish County Plumbing Code involved in this case have been fully set forth in Appellant's Jurisdictional Statement and Appendix D thereto. The Appellant's claim that the provision of the plumbing code violated his rights under the Fourteenth Amendment to the Constitution of the United States was made at every stage of the proceedings below as detailed in the Jurisdictional Statement.

B. The Questions Presented are of National Importance.

1. There is a substantial impact on property owners and renters.

The Snohomish County Plumbing Code says that a property owner who does not reside or intend to reside on his property may not perform even the most elementary plumbing work unless he qualifies as a plumbing contractor, even though the same Code also provides that all plumbing work, whether done by an owner-occupier or by a plumbing contractor, must meet the same standards and pass the same inspection.[1]

The Washington Supreme Court, by implication, has affirmed the proposition that an occupier of a residence who is not the owner is likewise prohibited from fixing the plumbing. If he does, he can go to jail.[2]

1. Snohomish County Plumbing Code §§ 1.4, 1.11, 1.13, 306, 309, 321.
2. Snohomish County Plumbing Code § 1.7. See Record on Appeal.

Therefore, the decision of the Supreme Court of the State of Washington means that, wherever there has been adopted a Code comparable to that in Snohomish County:

> (1) A person who occupies his residence, if not the owner, cannot himself do any plumbing work therein, even if he has a 20-year lease;
>
> (2) A person may not assist his neighbor in installing a toilet, he may not assist in group-help projects, or even assist his aged mother at her home.

In 1960, there were 10,800 single-family dwellings in Everett, the County Seat of Snohomish County, of which 36.1 per cent, or about 4,000, were renter-occupied.[3]

None of those heads of households can repair the plumbing in their homes. A significant portion of those renters are members of economically disadvantaged minority groups who can least afford to hire plumbing contractors.[4]

All plumbing work in Snohomish County must pass an inspection before being used. The standards imposed are severe enough to insure that the work passing in-

---

3. U. S. Bureau of Census, Dept. of Commerce, Pub. No. HC(1) 49, U. S. Census of Housing, 1960, Washington, Table 15.

4. Report of the National Advisory Committee on Civil Disorders, 257, 348-58 (1968). On the Pacific Coast, plumbing contractors' hourly charges range between $9.00 and $12.00. Union-member journeymen plumbers receive a basic hourly wage of $6.00, plus fringe benefits.

spection will not adversely affect public health.[5] Thus, no person doing plumbing work, whether a plumbing contractor or not, may inflict substandard or unhealthy plumbing on the public, and the Chief Plumbing Inspector of Snohomish County so testified at the trial.

Section 1:10(c) of the Snohomish County Plumbing Code adds nothing to the protection already afforded to public health by the other provisions of the Code, but it does confer substantial benefits on plumbing contractors and plumbers' unions.[6]

2. The questions raised have a substantial impact on retail outlets.

The "do-it-yourselfers" are not the only ones who suffer from this legislation. The retail plumbing supply stores sell their share of the products of an industry which annually manufactures over one-half billion dollars worth of plumbing fixtures.[7] Eighty-five per cent of plumbing supplies sold by *amici curiae* are sold to persons doing their own plumbing.

---

5. Record p. 0075.

6. The importance of this provision to the commercial plumbing community is shown by the fact that the Kitsap County Master Plumbers' Association was represented by counsel and filed an *amicus curiae* brief in support of the prosecuting attorney's position in *State v. Randall*, Superior Court of the State of Washington in and for Kitsap County, No. 44599 (unreported). *Randall* was a criminal prosecution of a homeowner for doing plumbing work in a home not occupied by him without securing the permit required by the plumbing code. The trial court dismissed the action.

7. U. S. Bureau of Census, Dept. of Commerce, Pub. No. M.C. 63(2), 1963 Census of Manufacturers, Table B-5.

From 1963 through 1966, between 778,000 and one million private, single-family housing units were constructed in the nation each year.[8] If only ten per cent of that construction were performed by owners themselves, which would not be unusual in the Pacific Northwest, 77,000 to 100,000 units would be built each year by the "do-it-yourselfers."[9] This new construction alone would involve annual average sales of plumbing supplies valued at about $200,000,000.[10]

The persons who control or monopolize the plumbing industry in Everett stand to receive substantial benefits. The expansion of such monopolistic benefits to a state and nation-wide basis would confer correspondingly greater benefits. In 1960:

(1) In the United States, there were 58,326,357 housing units in existence. 76.3 per cent of these were single-family dwellings. 61.9 per cent were owner occupied; 38.1 per cent were renter occupied.[11]

(2) In the State of Washington, there were 1,009,519 housing units in existence. 83.1 per cent of these were single-family dwellings. 68.5 per cent

8. U. S. Business and Defense Services Administration, Dept. of Commerce, Construction Review, Table A-1 (February, 1968).
9. It is not at all uncommon in the Pacific Northwest for persons of moderate income to purchase and renovate single-family homes for sale or rental.
10. Contractors in Longview, Washington, state that a good rule-of-thumb estimate for two baths and one kitchen is approximately $2,000.
11. U. S. Bureau of Census, Dept. of Commerce, Pub. No. HC(1) 1, U. S. Census of Housing, 1960, Table 15.

were owner-occupied; 31.5 per cent were renter occupied.[12]

(3) In the State of Oregon, there were 622,853 housing units in existence. 86.5 per cent of these were single-family dwellings. 69.3 per cent were owner occupied; 30.7 per cent were renter occupied.[13]

(4) In the State of Idaho, there were 223,533 housing units in existence. 89.4 per cent of these were single-family dwellings. 70.5 per cent were owner occupied; 29.5 per cent were renter occupied.[14]

(5) In the State of California, there were 5,465,870 housing units in existence. 76.5 per cent of these were single-family dwellings. 58.4 per cent were owner occupied; 41.6 per cent were renter occupied.[15]

Those 30 per cent to 40 per cent of the people in this country who occupy homes not owned by them, if subject to Snohomish County-type plumbing codes, would have no reason whatsoever to purchase plumbing fix-

---

12. U. S. Census of Housing 1960, Washington, *op. cit. supra* Note 3 at Table 1.
13. U. S. Bureau of Census, Dept. of Commerce, Pub. No. HC(1) 39, U. S. Census of Housing 1960, Oregon, Table 1.
14. U. S. Bureau of Census, Dept. of Commerce, Pub. No. HC(1) 14, U. S. Census of Housing 1960, Idaho, Table 1.
15. U. S. Bureau of Census, Dept. of Commerce, Pub. No. HC (1) 6, U. S. Census of Housing 1960, California, Table 1.

tures at retail. In addition to the effect which the adoption of such legislation would have on people no longer allowed to do their own plumbing, the loss of market would be catastrophic to those in the retail plumbing supplies business. It is a rare plumbing contractor who is not in the business of selling plumbing fixtures and equipment. The contracting business and the sale of the equipment to be installed go hand in glove. Once the plumbing contractors and the plumbers' unions have acquired the stranglehold afforded by this type of legislation on plumbing activities and sale of plumbing fixtures, there will be no limit to the cost resulting to the homeowner.

3. The questions have a substantial impact on the social structure.

This case involves another facet, perhaps even more important than the economic, and that is its effect on a fundamental premise of our way of life. Certainly, some regulation of and restriction on use of land, type of construction, and the like, are required in any densely-populated society. Heretofore, so long as the property owner complied with the standards imposed by government to protect the public, he has not been compelled to hire others to do his work.

Now the plumbing contractors and the plumbers' unions have procured legislation which, through crim-

inal sanctions, takes away what has customarily been thought of as a basic right of ownership—the right to do your own work on your own land.

It would be equally reasonable to forbid a plumber, in the interests of safety, to tinker with or fix any automobile he happens to own, unless he certifies that he alone will occupy it on the public highways.

This case represents an opportunity to define the extent to which any governmental unit can dictate to the individual in areas not related to public health, safety and welfare. If a person's work can pass an inspection, he should be allowed to perform that work himself; he should not be compelled to employ special-interest groups at exorbitant cost.

No legislation should have as its purpose the granting to any segment of an industry the power to dictate to, and control the profit of, its competitors.

4. The classifications established by Section 1.10(c) of the Snohomish County Plumbing Code are irrational and arbitrary.

The Majority of the Supreme Court of the State of Washington upheld Section 1.10(c) of the Snohomish County Plumbing Code (against the contention that it violated the Equal Protection Clause of the Fourteenth Amendment) on the "assumption" that an occupant

would do a more careful job of plumbing because he would be motivated to protect himself and his family. The Court's assumption overlooks the fact that the Code does not classify in terms of occupancy; the Code prevents a renter-occupier, who would have the same motivations for careful work as an owner-occupier, from doing the plumbing in his residence. This inconsistency of the Majority's decision is well pointed out in the Dissenting Opinion.

IV CONCLUSION

This case is of substantial importance, and the Court should note probable jurisdiction.

Respectfully submitted,

WILLARD WALKER
HARRY R. CALBOM, JR.
Park Plaza Building
Longview, Washington

By_____
Harry R. Calbom, Jr.

April 29, 1968

SUPREME COURT, U. S.

FILED

MAY 31 1968

JOHN F. DAVIS, CLERK

No. 1283

IN THE

Supreme Court of the United States

October Term 1967

STATE ex rel. WILMER RHODES,
Appellant

vs.

GRANT K. COOK,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

APPELLEE'S MOTION TO AFFIRM

ROBERT E. SCHILLBERG
Prosecuting Attorney for
Snohomish County, Washington

JOHN F. WILSON
Special Deputy Prosecuting
Attorney
Attorneys for Appellee

Office and Post Office Address:
Court House
Everett, Washington

No. 1283

IN THE

Supreme Court of the United States

October Term 1967

STATE ex rel. WILMER RHODES,
Appellant

vs.

GRANT K. COOK,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

APPELLEE'S MOTION TO AFFIRM

ROBERT E. SCHILLBERG
Prosecuting Attorney for
Snohomish County, Washington

JOHN F. WILSON
Special Deputy Prosecuting
Attorney
Attorneys for Appellee

Office and Post Office Address:
Court House
Everett, Washington

SUBJECT INDEX

Page

Appellee's Motion to Affirm 1

Argument 1

I The Snohomish County Plumbing Code Does Not Violate ". . . Nor Shall Any State Deprive Any Person of Life, Liberty, or Property, Without Due Process of Law; . . ." by Requiring Licensing of Owners of Property Held for Sale or Rental Prior to the Issuance of a Plumbing Permit 1

II The Snohomish County Plumbing Code Does Not Violate ". . . Nor Deny to Any Person Within Its Jurisdiction the Equal Protection of the Laws" by Exempting From the Conceded General Need for the Licensing of Plumbers, Resident Single Family Homeowners 6

TABLES OF AUTHORITY

Tables of Cases

Bowles v. CoOperative G.L.F. Farm Products, D.C. N.Y., 53 F.Supp. 413, 415 11

Hartford S.B.I. Ins. Co. v. Harrison, 301 US 459, 462, 81 L.Ed. 1223, 1226, 57 S.Ct. 838 8

Lindsley v. Natural Carbonic Gas Co., 220 US 61, 78, 79, 55 L.Ed. 369, 377, 31 S.Ct. 337, Ann. Cas. 1912C 160 8

Louisville Gas & E. Co. v. Coleman, 277 US 32, 37, 38, 72 L.Ed. 770, 774, 48 S.Ct. 423 8

Morey v. Doud, 354 US 457, 1 L.Ed. 2d 1485, 77 S.Ct. 1344 ..... 7, 12

Spokane v. Latham, 181 Wash, 161, 42 P.2d 427 (1935) 2

Tacoma v. Fox, 158 Wash. 325, 290 Pac. 1010 (1930) 2

Williamson v. Lee Optical of Okla., Inc., 348 US 483, 489, 99 L.Ed. 2d 1485, 77 S.Ct. 1344 7

Textbooks

Page

41 Am. Jur. 662 5

41 Am. Jur. 667-68 3

Other Authority

Black's Law Dictionary, Fourth Edition 11

Revised Rules of the Supreme Court 1

Webster's Third New International Dictionary. of the United States, Rule 16 12

United States Constitution, Amendment XIV § 1 ..... 2, 6

No. 1283

IN THE
Supreme Court of the United States
October Term 1967

STATE ex rel. WILMER RHODES,
Appellant

vs.

GRANT K. COOK,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

APPELLEE'S MOTION TO AFFIRM

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the judgment of the Supreme Court of the State of Washington be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

ARGUMENT

I THE SNOHOMISH COUNTY PLUMBING CODE DOES NOT VIOLATE "..., NOR SHALL

ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; . . ."[1] BY REQUIRING LICENSING OF OWNERS OF PROPERTY HELD FOR SALE OR RENTAL PRIOR TO THE ISSUANCE OF A PLUMBING PERMIT.

There is no issue in this case as to the legitimate exercise of the police power in the general requirement of Section 1.10(a)[2] of the Uniform Plumbing Code requiring licensing of plumbers, at least insofar as it relates to "commercial plumbers" or plumbing done "for others."[3] There has at no time in this

---

[1] Amendment XIV § 1, United States Constitution.

[2] "No permit shall be issued to any person to do or cause to be done any plumbing or drainage work regulated by this code, except to a person holding a valid unexpired and unrevoked Plumbing Contractor's Certificate of Qualification or Registration as required by Section 2.3, except when and as otherwise hereinafter provided in this section."

[3] ". . . It is not the contention of petitioner that it is beyond the power of Snohomish County to license and otherwise restrict the activities of commercial plumbers for the purpose of protecting the public health and welfare. That such is a valid exercise of the state's police power was established in *Tacoma v. Fox*, 158 Wash. 325, 290 Pac. 1010 (1930) and affirmed in *City of Spokane v. Latham*, 181 Wash. 161, 42 P. 2d 427 (1935). Petitioner also agrees with the following statement of the prevailing law in the United States:

" 'While there are some authorities to the contrary, it is now generally recognized to be a legitimate exercise of the police power in the interest of the public health, safety and welfare for the State or municipal subdivision to require registration, exam-

case been any attack upon the fairness or procedure in practice or theory or any other aspect of the licensing procedure itself. The appellant concedes on page 16 of the jurisdictional statement that, "the actual experience under the Code, . . . is that the comprehensive requirements of the Code have compelled a healthy plumbing result, . . ."

Appellant states on page 6 of his Jurisdictional Statement that "it is clear that (his) work will fully meet the code standards." This assumes that the

---

ination and licensing of those who install plumbing or who do electrical installation *for others.*' (Emphasis added) 41 Am. Jur. 667-68." Brief of Appellant (Petitioner) presented to the trial court, set forth at page 28 of the transcript.

"Appellant concedes that licensing of commercial plumbers is reasonably related to the public health and safety. Likewise, it must be conceded that one who does any amount of plumbing for others than himself and his immediate family, although it be more limited than that done by commercial plumbers, is in a position similar to commercial plumbers, and can be required to be certified as to requisite skills." Holding of the Washington State Supreme Court, page 4a, Appellant's Jurisdictional Statement.

"This requirement was not at issue in this case. Appellant conceded the propriety of the licensing requirements being applicable to plumbing contractors or plumbers who hold themselves out for hire. Appellant objected only to having to become a plumbing contractor or commercial plumber in order to do plumbing work on the single-family house which he owned." Footnote 4, page 9, Appellant's Jurisdictional Statement.

appellant has the requisite skill to adequately do the work. This fact has never been pleaded or proven in this case nor has any attempt been made to demonstrate this fact by passing the requisite tests required to become licensed. Alternatively or conjunctively, this assumes that the licensing requirements of the code have no bearing upon public health or safety as the other code requirements of standards of materials and inspections provide adequate safeguards. This later assumption is directly contrary to the holding of the Washington Supreme Court.[4] This is also contrary to the conceded need for the

---

[4] "Although one who does plumbing in a residence which he intends to rent or sell is subject to the laws of landlord-tenant, or of contract, such laws are not designed to protect the public health and safety. Nor are such laws adequate for this purpose.

"Testimony at trial indicated that some plumbing defects are extremely difficult to detect, even under the detailed inspection required by the Plumbing Code, and that the plumbing inspectors rely to some extent upon the skill and care of commercial plumbers. Licensed plumbers generally do better work than do nonlicensed plumbers. It is, therefore, reasonable to limit noncertified work, and even though all work must be inspected, there is a legitimate reason for the certification requirement set out in section 1.10.

"We cannot say that there is no reasonable relation to public health and safety in the requirement that non-resident homeowners be licensed to do plumbing for others; nor can we say that appellant has been arbitrarily deprived of a lawful right." Page 5a, Appellant's Jurisdictional Statement.

licensing of commercial plumbers.[5] No authority or reason has been cited related to due process for drawing a distinction based upon ownership of property in regard to the need for licensing. The argument that inspection provides adequate safeguards against dangerous plumbing applies with more force to the work of commercial plumbers. This argument attacks directly the conceded need for the licensing of commercial plumbers.

---

[5] See footnote 1, *supra*, also, Section 41, Am. Jur. 662, wherein it states:

> "OF PLUMBERS. While there is some divergence of opinion, the great weight of authority in this country is to the effect that the business of plumbing is so intimately connected with the public health, especially in large centers of population, as to be the proper subject of police regulation by the legislature or by municipal corporations and other local governmental units acting under delegated powers from the state. It is hardly open to question that defective plumbing and plumbing which is not skillfully executed or done upon proper scientific principles greatly endangers the health of the public in such localities, being conducive to the creation and spread of epidemic diseases of a virulent and dangerous character. And it follows that the state may impose restraint upon the business or work of plumbers by any reasonable regulations calculated and necessary for the purpose of insuring a character of plumbing which will not endanger the safety or health of the public, or for the protection of the public against the dangers of careless and inefficient work, without infringing the constitutional right of the citizen to pur-

II THE SNOHOMISH COUNTY PLUMBING CODE DOES NOT VIOLATE ". . . NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS"[6] BY EXEMPTING FROM THE CONCEDED GENERAL NEED FOR THE LICENSING OF PLUMBERS, RESIDENT SINGLE FAMILY HOMEOWNERS.

The appellant has at no time in this case attacked the desirability or legality of making an exception to the requirement of licensing of plumbers as was done in Section 1.10(c)[7] The appellant has not advocated having Section 1.10(c) struck from the code, even though striking 1.10(c) would, under the conceded general need for licensing of plumbers, require all plumbing be done by licensed plumbers and thereby solve any possible equal protection problem. As-

---

sue such calling, or infringing other personal rights guaranteed by the constitution. Under modern systems of house building and disposal of sewage, the dangers to the health of the entire public, arising from defective plumbing, are so great, and at the same time so insidious, that were the state unable to provide for the proper regulation and supervision of the plumber in his work, so as to minimize the danger to the public health from the escape of sewer gas, it would be unable to protect the public life and health in a most important particular . . ."

[6] Amendment XIV § 1, Constitution of the United States.

[7] "§1.10 To Whom Permits May Be Issued

"(c) Any permit required by this code may

suming the need for legislative classification to which the contrary is not suggested by appellant, the only thing left is a general invitation to the United States Supreme Court to draft an exception to the general rule which will be broad enough to encompass the appellant. The *amicus curiae* is inviting the Court to include renters in any drafted exemption. The terms of the proposed classification are vaguely and alternatively defined as evolving around the concepts of commerce, ownership, and, for the first time before this Court, residency.

The legal tests to be applied in determining whether the equal protection clause has been violated just from the authorities cited by appellant are set out in *Morey v. Doud*, 354 U.S. 457, 1 L.Ed. 2d 1485, 77 S.Ct. 1344.[8]

---

be issued to any person to do any plumbing or drainage work regulated by this code in a single-family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings in the event that any such person is the bona fide owner of any such dwellings and accessory buildings and quarters and that the same are occupied or designed to be occupied by said owner, provided, that said owner shall personally purchase all material and shall personally perform all labor in connection therewith."

[8] "In determining the constitutionality of the Act's application to appellees in the light of its exception of American Express money orders, we start with the established proposition that the 'prohibition of the Equal Protection Clause goes no further than the invidious discrimination.' *Williamson v. Lee Optical*

The present regulation is very clear and unambiguous. If the statistics supplied by *amicus curiae* are accurate, 68.5 percent of the single family residences in the state of Washington would fall in the owner-

---

of Okla., Inc., 348 US 483, 489, 99 L ed 563, 573, 75 S Ct 461. The rules for testing a discrimination have been summarized as follows:

"'1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.' *Lindsley v Natural Carbonic Gas Co.*, 220 US 61, 78, 79, 55 L ed 369, 377, 31 S Ct 337, Ann Cas 1912C 160.

"To these rules we add the caution that 'Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.' *Louisville Gas & E. Co. v. Coleman*, 277 US 32, 37, 38, 72 L ed 770, 774, 48 S Ct 423; *Hartford S.B.I. Ins. Co. v Harrison*, 301 US 459, 462, 81 L ed 1223, 1226, 57 S Ct 838."

occupied exemption.[9] To replace the demonstrated skill of the licensed plumber evident from passing the testing required for licensing, there is the pride of ownership, which would tend to enhance the quality of the work *and* the fact that the plumber will occupy the plumbed premises and thereby subject himself, his immediate family, and normally his closest personal friends who may visit the premises or live nearby, to any risk created by defective plumbing of disease or obnoxious odors and materials.[10]

---

[9] Page 8, Brief of Amicus Curiae

[10] See opinion of Washington State Supreme Court, page 6a of Appellant's Jurisdictional Statement, as follows:

"Since it is reasonable to assume that homeowners who do plumbing work for themselves and their immediate families in residences in which they reside or intend to reside, will tend to perform the work more carefully than would those who do plumbing work for strangers, it is reasonable to require certification of the latter class while not requiring certification of the former class. The public health and safety may adequately be protected in the first case by the inherent concern one has for his own welfare and that of his immediate family. This immediate concern may not be present when strangers are to use the premises, and therefore there is no adequate substitute for the certification requirement. We find a logical connection between the object of the legislation, i.e., the protection of the public health and safety, and the requirement that one must intend to live in a residence himself if he is to be issued a permit to do plumbing work without first being examined as to requisite skill and certified as a plumbing contractor."

The suggested concept for an exception based upon ownership alone would in the case of rental property or property being held or built for sale always have the included factor of a commercial basis, i.e., plumbing being done for others.[11] Pride of ownership alone, Snohomish County contends, is not of and in itself a sufficient safeguard, as can be demonstrated by any slum or ghetto landlord in the United States.

Also, a concept of ownership alone would raise numerous due process problems. The right to earn a living as a plumber is entitled to constitutional protection equal to the constitutional protection of property rights. An owner of property who wanted to hire someone to do the work for him would have to hire a licensed plumber. An owner of a large suburban development might not if he did the work himself. Agency problems would develop as to whom the owner would be who could do unlicensed plumbing work when corporate, general or limited partnership, joint ventures, joint tenancies, trusts, or other forms of ownership were involved. Each agency problem would have to be resolved upon a basis that would

---

[11] "This conclusion is based upon the reasoning that a property owner who does plumbing for others, i.e. for prospective tenants or purchasers of his property, has a similar impact upon the public to a commercial plumber. He is to some extent carrying on a commercial activity, since plumbing is an integral part of the property he intends to rent or sell." Opinion of Washington State Supreme Court, page 4a, Appellant's Jurisdictional Statement.

make a distinction as to the various forms of ownership so that they each received equal protection of the law, while at the same time assuring that the agents, independent contractors, or employees involved were not themselves denied the equal protection of the law by requiring some to be licensed to plumb and others not to be so licensed.

A concept based on residency alone would not warrant relief to the appellant as he does not fall in the class. The argument of *amicus curiae* in regard to a 20-year lease may well have merit if addressed to the legislative authority of the Snohomish County Commissioners, as it has not been. No showing has been made of the actual impact of such an exception. Possibly, 10-year leases could be included, or 5-year leases. At some point short of tenants at sufferance or month-to-month tenancy, additional protection should clearly be included as the tenant may only be concerned with the minimum expenditure of time and money which will protect himself and his family from any risk of disease or obnoxious results for the balance of his tenancy, which may be one day, five days, or thirty days.

Finally, an exemption based upon "commercial" plumbers alone has been suggested. Black's Law Dictionary, Fourth Edition, defines "commercial" as:

> "Relating to or connected with trade and traffic or commerce in general. 'Zante Currents', C.C.Cal., 73 F. 189. Occupied with commerce. *Bowles v. Co-Operative G.L.F. Farm Products*, D.C. N.Y., 53 F. Supp. 413, 415."

Webster's Third New International Dictionary defines it as:

> "1. of, in, or relating to commerce: as a: occupied with or engaged in commerce . . . b: related to or dealing with commerce . . . c: used in or characteristic of commerce . . . d: suitable to or adequate for commerce . . . e(1): of the kind of quality used in commerce (2): of an average or inferior quality . . . f: produced or productible in large quantities for commerce . . . 2 a: from the point of view of profit: having profit as the primary aim . . . b: sacrificing artistic principles for qualities that bring financial success . . ."

We submit that a distinction based on commercial plumbers would be so vague and indefinite that it would be struck down on that ground and also meaningless and impossible of practical application by a plumbing inspector. Appellant also is connected with commerce as related to the prospective sale or rental of his property.

CONCLUSION

Appellee, Snohomish County, respectfully suggests that appellant clearly has not met his burden as required in the *Morey* case, *supra*, of showing that the classification in the ordinance does not rest upon any reasonable basis and is essentially arbitrary. Appellee prays that the judgment of the Supreme Court of the State of Washington be affirmed.

DATED May 29, 1968.

Respectfully submitted,

ROBERT E. SCHILLBERG
Prosecuting Attorney for
Snohomish County, Washington

JOHN F. WILSON
Special Deputy Prosecuting
Attorney
Attorneys for Appellee

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

RHODES *v.* COOK.

APPEAL FROM THE SUPREME COURT OF WASHINGTON.

No. 1283. Decided June 17, 1968.

PER CURIAM.

The appeal is dismissed for want of a substantial federal question.

MR. JUSTICE DOUGLAS dissents.